TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]. 1914

No. [redacted].383

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED MARCH 9, 1914.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 3, 1914.

1 In the District Court of the United States for the Northern District of Florida, at Pensacola, Florida.

Be it remembered, that on the 14th day of January, A. D. 1914, came the Pullman Company, a Corporation, by its Solicitors, the Honorable John E. Hartridge and the Honorable G. S. Fernald, and filed in the office of the Clerk of said Court the Bill of Complaint of the said Corporation against W. V. Knott, as Comptroller of the State of Florida, which said Bill is in the words and figures following, to-wit:

2 In the District Court of the United States in and for the Northern District of Florida.

In Equity. No. —.

THE PULLMAN COMPANY, Complainant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

To the Honorable Judges of the District Court aforesaid:

Your orator, The Pullman Company, as complainant, brings this bill of complaint against the above named defendant and thereupon complains and says:

I.

That your orator is a corporation created and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business in the City of Chicago, County of Cook, and State of Illinois, and is a resident and citizen of said State of Illinois.

That the defendant is the duly elected, qualified and acting Comptroller of the State of Florida, and is a citizen of said State of Florida, and a resident of said District.

II.

That your orator has complied with all of the statutes of the State of Florida requisite to its engaging in business in said state, and has been for more than ten years last past continuously and now is engaged in the business of furnishing sleeping cars and parlor cars to railroad companies for the use of such companies upon their railroads and for the transportation of the passengers of such railroads therein, under written contracts for terms of years, throughout the United States of America and the several states thereof, and in adjacent foreign countries, and has been during all

3 said period and now is engaged in furnishing under such written contracts for terms of years sleeping cars and parlor cars to railroad companies whose railroads run in, into and

out of the State of Florida, and that some of your orator's said sleeping cars and parlor cars run and are operated by such railroad companies on their railroads from other states into Florida and from Florida into other states and some of your orator's said sleeping cars and parlor cars run and are operated by such railroad companies between points wholly within the State of Florida. That in such sleeping cars of your orator your orator furnishes sleeping accommodations and seats and in such parlor cars your orator furnishes reserved and specified seats; to-wit, chairs, and in some of its sleeping and parlor cars your orator furnishes food and refreshment, all such sleeping accommodations, seats, chairs and food and refreshment being furnished to the passengers of the railroad companies traveling in such cars of your orator.

III.

That your orator now has and for more than ten years last past has had within the State of Florida cars of the kinds hereinbefore referred to running in, into and out of the State of Florida as hereinbefore stated, and that some of said cars have, during all of said time, been property of your orator within the State of Florida and subject to such property taxation therein as might be lawfully provided for by the Legislature of said State of Florida.

By Section 48 of Chapter 4115 of the laws of Florida of 1893, approved June 2nd, 1893, entitled "An Act for the collection and assessment of revenue," it was provided for the taxation of the property of railroad companies and of sleeping and parlor car companies, and that sleeping and parlor car companies should on or before January 1st, 1894, and annually thereafter, report to the Comptroller of said State of Florida the total amount of their gross
4 receipts derived from business done between points in that state, and at the same time should pay into the State Treasury the sum of $1.50 upon each $100.00 of such gross receipts, with provisions that if the report should not be made the Comptroller should estimate the gross receipts, add ten per cent. to the amount of the taxes as a penalty and proceed to collect the tax with costs and penalties the same as other delinquent taxes are collected; that in the year 1895 the Legislature of Florida re-enacted all of the provisions for taxation of the property of railroad and sleeping and parlor car companies as above stated in and by Section 47 of Chapter 4322, being an Act entitled "An Act for the assessment and collection of revenue," approved June 1st, 1895. That no other tax upon the property of sleeping and parlor car companies or upon such companies was ever provided by the laws of the State of Florida until the year 1907, but said tax on gross receipts was provided, paid, accepted and credited by the State of Florida as a general tax and in lieu of all other taxes upon sleeping and parlor car companies and the property of such companies; that by Section 46 of Chapter 5596, approved June 18th, 1907, entitled "An Act relating to tax assessments and collection of revenue," it was provided for the assessment and taxation of the property of railroad

companies and sleeping or parlor car companies, including sleeping and parlor cars of each of such companies, by ad valorem tax, and it was therein and thereby made the duty of the Comptroller, Attorney General and State Treasurer to assess all such property of railroad companies and sleeping and parlor car companies from the best information they could obtain, specifying the value thereof in each county, and that the value of the locomotives, engines, passenger, sleeping, parlor, freight, platform, construction and other cars and appurtenances should be apportioned by the Comptroller pro rata to each mile of main track, branch, switch, spur
5 track and side track, and that the proportionate value thereof should be assessed in and by the counties, cities and towns through which the railroad ran, as provided by law, and that upon the value thus ascertained and apportioned taxes should be assessed the same as the property of individuals. That in and by said Section 46 railroad companies and sleeping and parlor car companies and the property of each such companies is and are treated in common and the cars of sleeping and parlor car companies are treated the same as cars of railroad companies and as the same character of property used in transporting passengers by railroad and are subjected to the same ad valorem taxes. That by Section 47 of the same chapter there was re-enacted in all the material particulars and substantially word for word the provisions heretofore contained in said statute of 1893, and in said statute of 1895, providing for a tax to be computed upon the gross receipts of sleeping and parlor car companies at $1.50 on each $100.00 thereof, as hereinbefore set forth, and thereby provided for a further tax upon the property of sleeping car and parlor car companies in addition to the ad valorem tax thereon provided in and by said Section 46.

That in said year 1907 the Legislature of said State of Florida also enacted Chapter 5597, entitled "An Act imposing license and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to comply with the provisions thereof," and therein and thereby provided for a license tax upon companies engaging in sleeping car or parlor car business, for the transaction of such business, and prohibited any person, firm or corporation from engaging in the transaction of said business unless a state license therefor shall have been procured, and also provided therein for the imposition of further license taxes by the county, city or town in which the business should be engaged in. That the license fees therefor as therein provided were as follows, for engaging in the business of:

6 Sleeping and parlor cars, $25 for each car;

With buffet, $40 for each car.

That each of said statutes of 1907 hereinbefore referred to from the time of their enactment remained in force until the year 1913 when the license tax provision for sleeping and parlor car companies was amended by the Legislature of Florida and is now Section 44 of Chapter 6421 of the laws of 1913 entitled "An Act imposing licenses and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to

comply with the provisions thereof." That said Chapter 6421 prohibits any person, firm or corporation from engaging in the transaction of said business unless a state license therefor shall have been procured. Said section is as follows:

"Sleeping and Parlor Car Companies; Licenses.

"No County or Municipal License Required.

"Penalty.

"SEC. 44. Sleeping and Parlor Car Companies operating any such cars on or over any railroads or any part of said railroads in this State, shall on the first day of October of each year, pay to the Comptroller a license tax of five thousand five hundred dollars ($5,500.00) which shall be paid into the State Treasury by the Comptroller to the credit of the General Revenue Fund. Provided that, no other County or Municipal license taxes shall be required of any such company under this Section.

"The Superintendent of any Sleeping and Parlor Car Company violating the provisions of this Act, and any person who acts as Agent for any such company before it has paid the above license tax payable by said company shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished respectively by a fine of not more than five hundred ($500.00) dollars, or by imprisonment in the County Jail not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court."

That said Section 44 did not and does not, nor does said Chapter 6421, nor does any other statute of the State of Florida, provide that a further tax based on gross receipts or otherwise should or shall be required for the privilege of engaging in the sleeping car or parlor car business, but, on the contrary, Section 5 of said Chapter 6421, laws of 1913, expressly provides "that only one state
7 license tax shall be required in any case unless otherwise provided in this Act."

That the provision of said Section 46 of Chapter 5596 of the laws of 1907 for the taxation of the property of railroad and sleeping and parlor car companies by ad valorem is still in force. And the provisions of Section 47 of said last named Chapter 5596, laws of 1907, providing for gross receipts tax of sleeping and parlor car companies was by the Legislature of Florida of 1913 re-enacted, with some slight change with respect to notice, but in all essentials the same as section 47 of Chapter 5596 of the laws of 1907, and is now Section 45 of Chapter 6421 of the laws of 1913.

8 IV.

That on or about the 1st day of October, 1907, and during the year next thereafter, and before the 1st day of October, 1908, your orator paid to the proper officer, as specified in said Chapter 5597, license taxes for the transaction of its business which is hereinbefore

described during said year, as provided in and by said Chapter 5597, and received from the officer designated in said chapter written licenses therefor issued by the Comptroller of said state substantially if not exactly as in said chapter provided. And likewise, in each year thereafter beginning on the 1st day of October your orator has paid license taxes as provided in and by said Chapter 5597, and as hereinbefore set forth with respect to the license taxes paid in the year beginning October 1st, 1907, and has in each of said years thereafter received licenses for transacting its business in each of said years, issued in and for each of said years respectively, as hereinbefore set forth, with respect to said year beginning October 1st, 1907, and that said license taxes so paid by your orator for the year beginning October 1st, 1911, amounted to and was the sum of $4,884.00, and for the year beginning October 1st, 1912, amounted to and was the sum of $4,759.00. And your orator has also paid the license taxes imposed against it for the year beginning October 1st, 1913, amounting to $5,500.00, as provided by said Section 44 of Chapter 6421, laws of 1913, and upon paying the same was licensed to conduct its business as provided by said Chapter 6421.

That in the year 1908, the first tax year after the taking effect of said Chapter 5396, laws of 1907, your orator's cars and other property in the State of Florida, including all the proportion
9 to which the state was entitled of such of the cars of your orator as were used partly within and partly without said state, was assessed by the Comptroller, Attorney General and State Treasurer of said State of Florida, as provided in Section 46 of Chapter 5596, Laws of 1907, and your orator fully paid all the state, county, city and town taxes which were levied thereon, and in each year thereafter, including the year 1913, the said property and all of the property of your orator in said State of Florida, including a proportion of your orator's cars and other property used partly within and partly without said State of Florida, has been assessed by the Comptroller, Attorney General, and Treasurer of said state, and your orator has likewise paid all the state, county, city and town taxes levied thereon.

That the amount of said ad valorem taxes for the year ending December 31st, 1911, paid by your orator, was $7,097.95, for the year ending December 31st, 1912, $6,650.45, and for the year 1913 $8,447.39.

Said amount stated for 1913 does not include the state and county taxes levied on such assessment in the Counties of Nassau and Pinellas for the reason that your orator has not been able to obtain a statement of the amount thereof, although your orator has twice applied therefor by letter to the Tax Collector of each of said counties and is ready and willing to pay the same whenever it can obtain statements thereof.

V.

That ever since the passage of the Act of the Legislature hereinbefore referred to enacted in 1893 your orator duly and successively made reports of its gross receipts thereunder and under said Act

hereinbefore set forth enacted in 1895, and continued to pay the taxes computed on such gross receipts after the Act of 1907 was enacted up to and including the year ending October 31st, 1908, the taxes for which year were paid on the 3rd day of December, 1908, and that thereafter your orator became and was advised that the imposition of said gross receipts taxes as provided in said Section 47 of Chapter 5596 of the laws of 1907 was not legal and was not constitutional under the Constitution of the State of Florida and that the statute providing therefor was not constitutional either under the constitution of said state or the Constitution of the United States, and your orator, acting under the advice of counsel, has not since that time made the reports or paid the taxes computed upon its said gross receipts except as hereinafter set forth.

That on or about the 3rd day of January, 1911, the then Comptroller of said State of Florida demanded of your orator that it immediately make the reports and pay the taxes upon its gross receipts which he, the said Comptroller, claimed was due and payable under the statute providing therefor on the 1st days of January 1910 and 1911, and that if said payments were not immediately made the State Comptroller would issue his warrant to the Sheriff of a county in Florida commanding him to collect said taxes by a levy upon and sale of the property of your orator, and thereupon your orator filed in this honorable court (then the Circuit Court for the Northern District of Florida) its bill of complaint therein and thereby prayed this Honorable Court to restrain the State Comptroller from taking any proceedings for the collection of said taxes, and this Honorable Court thereupon on said 31st day of January, 1911, made its order temporarily restraining the State Comptroller from taking said proceeding and that on the 11th day of February, 1911, the said cause came on to be heard before this Honorable Court upon an application for an injunction pendente lite, and this Honorable Court then heard, and made an order denying said application for the reasons therein stated. That an appeal from said order was there-
11 after taken to the Supreme Court of the United States where the same was disposed of and said appeal dismissed as hereinafter more fully stated.

That after the entry of said order by this Honorable Court and on February 28th, 1911, the said Comptroller again in writing demanded the reports and taxes for said years, whereupon on the 3rd day of March, 1911, your orator filed the reports for each of said years, to-wit, the year ending October 31st, 1909, year ending October 31st, 1910, under its protest and did not at the time of making said reports or otherwise except as hereinafter stated, pay the taxes claimed to be due thereon, and that said State Comptroller on the 13th day of March, 1911, issued his warrant to the Sheriff of Duval County, Florida, commanding him to levy and sell the property of your orator to satisfy the amount claimed to be due as taxes for said two years, amounting to $6,971.38, and said Sheriff thereafter and on the 15th day of March, 1911, levied upon the property of your orator and took into his physical possession one parlor car named "Grace" for the payment of said sum and threatened to sell the

same, and your orator thereafter and on the same day, to release its property from said seizure and to prevent a sale thereof, and obtain possession thereof for use in its said business, paid to said Sheriff said sum of $6,971.38, together with $30.00 costs.

That your orator afterwards and on the 18th day of December, 1911, filed its further bill in this Honorable Court, then the United States Circuit Court for the Northern District of Florida) against A. C. Croom, then Comptroller of said state, and said W. V. Knott, then Treasurer of said state, as such Comptroller and Treasurer, respectively, therein and thereby praying this Honorable Court to restrain and enjoin the State Comptroller from taking any proceeding to collect the taxes computed upon your orator's said gross re-

12 ceipts, which he, the said Comptroller, would claim to be due on the 1st day of January, 1912, and also praying that the said Treasurer be decreed to repay to your orator said sum of $6,971.38 claimed to have been due as taxes, and $30.00 costs, all of which was paid by your orator to said Sheriff of Duval County, as hereinbefore stated. And upon the 21st day of December, 1911, said last named cause came on to be heard before this Honorable Court on an application for an injunction pendente lite, as prayed for in the bill, which application was then and there on said last named day denied for the reasons stated in the order of Court then entered and that your orator appealed from said order to the Supreme Court of the United States. That said last named appeal was thereafter and on the 10th day of February, 1913, advanced to be argued with the former appeal hereinbefore referred to and said two appeals were thereafter and on the — day of November, 1913, argued and submitted to said Supreme Court, and on the 22nd day of December, 1913, said Supreme Court decided and held that by reason of the death of said defendant Croom, which had been suggested to said Court, that the Court had no jurisdiction to hear and determine said appeals, and that the appeals be dismissed for want of a proper appellee to stand in judgment upon the only question brought to that court, and it was so ordered by the Court.

VI.

Your orator further shows unto your honors that but two kinds of taxes are permitted under the Constitution of Florida, namely ad valorem taxes and license taxes and that the Supreme Court of said state has so held specifically. That prior to the enactment of said laws of 1907 hereinbefore referred to said tax computed on gross receipts was the only tax provided for sleeping and parlor car companies or their property and that under the statute of 1893 hereinbefore referred to and under the statute of 1895 hereinbefore referred to said tax was imposed and collected by the authorities of

said state and paid by your orator as a tax upon its property

13 and in lieu of other taxes upon its property, and under the statute of 1907 (Chapter 5596) up to and including the year ending October 31st, 1908, said tax computed on gross receipts was in each year imposed and collected by the authorities of said state,

and paid by your orator, as an additional tax upon its property, and that said gross receipts taxes were never imposed, collected, received, receipted for or treated by the authorities of said state as a license tax and were never credited on the books and accounts of said state as a license tax.

A copy of the receipt of the State Comptroller for the said tax paid by your orator December 3rd, 1908, for the year ending October 31st, 1908, and computed on the gross receipts for said year, issued under said Statute of 1907, marked "Exhibit A", and a copy of the receipt for the year ending October 31st, 1906, marked "Exhibit B", issued under said Statute of 1895, are hereby attached and hereby referred to.

That the license taxes paid by your orator in the year 1912, as hereinbefore set forth, were for licenses which ran for one year from October 1st, 1912, to October 1st, 1913, and those paid in 1913 were for a license for one year which ran for one year from October 1st, 1913, to October 1st, 1914, for which yearly periods respectively, your orator has been licensed to conduct its business. And your orator here repeats its allegations hereinbefore made with respect to the provisions and wording of Section 44 of Chapter 6421 of the laws of 1913, and further alleges that it is provided in and by Section 5 of said Chapter that only one state license shall be required in any case, unless otherwise provided in that Act (the Act being said Chapter 6421); and your orator further alleges and shows that the Comptroller of the State of Florida is not,

14 nor is any other official of said state or acting on behalf of said state or by authority of the laws thereof, authorized or empowered to make any assessment or impose any tax upon the gross receipts of your orator as and for a license tax, nor authorized to impose any other or further license taxes upon your orator for the transaction of its business or upon its business than the license taxes provided in and by said Section 44 of said Chapter 6421, laws of 1913, and that it is not provided in and by said Section 45, or elsewhere in the laws of Florida, that any other license, or any license, should be issued to a sleeping or parlor car company for or on account of the payment required by said Section 45, or that any privilege or permission should be granted to such company in consideration of such tax, or that such company should have and derive any privilege, permission or advantage whatsoever by reason of payment of the tax provided in said Section 45 that it would not otherwise have; the conduct of sleeping and parlor car business is not prohibited unless said tax shall be paid, nor is the right of your orator or any other person or corporation to do a sleeping or parlor car business made in any way dependent upon the payment of said tax on gross receipts, in any Statute or any provision of any Statute of the State of Florida. And your orator is further advised by counsel that, as a matter of law, said Chapter 6421 of the laws of 1913, does not provide for the payment of a license tax on the gross receipts of sleeping and parlor car companies and that the tax on gross receipts provided for by Section 45 of said Chapter 6421 is not a license tax for the privilege of conducting busi-

ness or for any privilege or permission that the State of Florida can or may lawfully grant and is not in fact or in law a license tax for any purpose whatsoever, and that the provisions of said Section 45 are, and all proceedings thereunder are, and any tax imposed thereunder will be, an attempt to impose and collect another and further and additional tax upon the property of such companies over and above the ad valorem tax, and as applied to your
15 orator is an attempt to tax the property of your orator twice for substantially the same period of time.

VII.

And your orator further shows that, as hereinbefore alleged, Section 46 of Chapter 5596 of the laws of Florida for 1907, which is still in force, provides for the return and taxation of the cars and other property of railroad companies and of sleeping and parlor car companies and thereunder the cars of sleeping and parlor car companies are treated and subjected to the same ad valorem tax as cars of railroad companies, and are treated as the same character of property used in furnishing transportation service on carriers by railroad; that the cars of your orator in Florida are furnished by your orator to railroads running in or into and out of the State under contracts as hereinbefore alleged and are delivered into the possession and control of the railroad companies and are by said railroad companies operated and used for the transportation of their passengers desiring sleeping or parlor car accommodations on their trains, and said cars are at all times while in said state in the actual possession and control of said railroad companies and form in fact a part of the transportation equipment of such railroad companies, and that of the revenue earned therein by far the greater part and on the average about eighty (80) per cent. is revenue of the railroad company for transportation and about twenty (20) per cent. is revenue of your orator for the accommodation and service in said cars furnished by your orator; that railroad companies and sleeping and parlor car companies in the State of Florida pay the same ad valorem tax, to-wit, a tax on all their property, that each pays the ad valorem taxes on its property and in addition thereto each of such companies is required to pay a license tax for the privilege of conducting its business; the railroad license tax is ten dollars for each mile of its railroad track in the state and that
16 of sleeping and parlor car companies is $5,500.00; that sleeping and parlor car companies in addition to the ad valorem tax and the license tax as hereinbefore stated were and are required by said Section 45 of Chapter 6421, laws of 1913, to pay said tax of $1.50 on each $100.00 of their gross receipts.

That by the provisions for the taxation of sleeping and parlor car companies in said Section 45 of Chapter 6421 of the laws of Florida for 1913, a different rule was and is provided from that provided by the laws of Florida for ascertaining and imposing taxes upon other property within the state; that neither the constitution nor the laws of Florida permit the classification of property for the purposes of

taxation by ownership, kind or use, or otherwise than as provided and limited in the constitution, which is property subject to taxation and property to be exempt from taxation, and that the Legislature of Florida has not classified or attempted to classify the property of said state for the purposes of taxation and that there is no law of the State of Florida under which the same is or can be so classified, except as in said constitution classified, as hereinbefore stated, but all property subject to taxation must be taxed by uniform and equal rate and at a just valuation. That the Legislature of said state, in enacting the provisions of said Section 45 of Chapter 6421 of the laws of 1913, and the Comptroller of said state in taking proceedings thereunder for the collection of the taxes therein provided does and will in fact impose taxes upon your orator's property by a rule and rate which is different from the rule and rate under which other property within the State of Florida is assessed and taxed, and that said Section 45 does not provide for the imposition of taxes upon the property of your orator by uniform and equal rate and just valuation or upon any valuation or by any uniformity or equality, and thereby the provisions of Section 1 of Article 9 of the Constitution of
17 Florida are violated and a material and substantial discrimination is made against your orator and its property. That said Section 45 of Chapter 6421, laws of 1913, provides for the imposition of a tax which would and will, if enforced against your orator, deprive your orator of its property without due process of law, and would and will be a denial of the equal protection of the laws to your orator, both in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that your orator's said property would not be taxed by uniform rate and just valuation, nor, as to said tax computed on gross receipts, upon any valuation or by any uniformity or equality, but that your orator's property would be taxed twice; once by ad valorem based upon the valuation thereof and again by computing an additional tax thereon at the rate of $1.50 on each $100.00 of the receipts of said property from the business done therewith and therein, while no other property in the State of Florida is subjected to said tax or to such double taxation.

VIII.

That if said Section 45 of Chapter 6421 of the laws of 1913 did provide for a license tax either by itself or in connection with the license taxes provided in and by said Section 44 of the same chapter, then your orator alleges and charges that the same was not based upon a just and reasonable classification of persons or of property and business for the purpose of license and the imposition of license taxes, but was an unjust and arbitrary exaction imposed upon sleeping and parlor car companies engaged in furnishing accommodations and service in their cars to persons who travel therein on the railroads of Florida and in connection with the transportation of such persons, and was and is not imposed upon any person or any other company or companies or class of companies, nor upon the earnings or receipts of any other person or company; if said Section

45 did provide for a license tax then a different rule was thereby provided for the license and license taxes of sleeping and parlor car companies from the rule provided for individuals and for other companies.

18 And that thereby sleeping car and parlor car companies were and especially your orator was, by said statutes and rule materially and substantially discriminated against and a tax computed upon gross receipts of sleeping and parlor car companies and upon the gross receipts of your orator as provided in said Section 45 would, if enforced against your orator, deprive your orator of its property without due process of law and would be a denial of the equal protection of the laws to your orator, both in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IX.

That there is not in said Section 45 of Chapter 6421 of the laws of 1913 or elsewhere in the laws of Florida any provision for a notice to sleeping and parlor car companies with respect to the amount of the estimated gross receipts to be made by the State Comptroller, if such company shall not make the report, or for any hearing with respect to the amount of such taxes to be fixed by the Comptroller in such case or any provision whatever for a hearing to be given to such companies thereon, nor is there any provision of any law of the State of Florida by or under which such sleeping or parlor car company could obtain a hearing as to the amount of the estimate of such gross receipts or the amount of taxes to be imposed thereon in case it should not make the report provided in said Section 45, nor is there any method provided for the ascertainment of any information by the Comptroller regarding such gross receipts nor is there any limitation upon the judgment or discretion of the Comptroller in estimating the amount of such gross receipts and so

19 far as said Comptroller's action is defined in and by said Section 45 he may arbitrarily estimate the amount of such gross receipts, and your orator repeats that there is no way provided by law by which such sleeping or parlor car company can have or obtain a hearing upon the question of the correctness or accuracy of such estimate, and your orator alleges and charges that by said Section 45 it is provided that the property of your orator may be taken and your orator be deprived of its property without due process of law and without a hearing with respect to the amount which your orator may and shall be called upon to pay as a tax claimed to be due under said Section 45, and for which your orator's property may be seized and sold and that no means are provided by which your orator can or could release its property so seized and held for sale to satisfy such claim for taxes, except by payment of the full amount of such taxes claimed with the penalty and costs thereon.

X.

That your orator is advised and believes that there is no statute of the State of Florida under and by which taxes claimed to be illegal

may be paid under protest and an action had to recover the same or to recover any money paid or alleged to have been paid for illegal taxes, and that the Supreme Court of the State of Florida has heretofore decided that taxes so paid cannot be recovered from the official to whom paid even though such official has not paid the money over to the state, and for that reason your orator is deprived by the laws of Florida of a judicial hearing upon the amount and legality of said claim for taxes and that your orator has under the laws of Florida no remedy at law. And your orator is advised that neither the State Comptroller nor any other official of Florida receiving taxes is responsible personally to the tax-payer therefor or for property seized to satisfy the tax even though such taxes shall thereafter be held illegal.

XI.

That your orator has no property in the State of Florida in addition to its cars, and their equipment, except a small quantity of office desks and furniture of small value and which would be inade-
20 quate to satisfy the amount provided by said Section 45 to have been due and payable as taxes on the 1st day of January, 1914. That your orator's cars and equipment thereof within the State of Florida are and is for the most part employed in interstate commerce and that both its cars and equipment so employed in interstate commerce and its cars and the equipment thereof employed for the time being between points wholly within the State of Florida are subject to the direction of the railroad companies to whom the same are furnished and employed are liable to employment at any time upon interstate lines and that said cars which are for the time being employed between points wholly within the State of Florida are also engaged in interstate commerce and in carrying passengers traveling from other states into Florida and from Florida into other states, and that all of your orator's cars which run in the State of Florida are employed in and by the railroads in transporting their passengers in interstate commerce, and therein your orator furnishes to such interstate passengers, as well as passengers traveling between points wholly within the state, the accommodations in such cars as hereinbefore described. That the only property your orator has in Florida sufficient to satisfy the claim for such taxes as said Section 47 provides to be due and payable January 1st, 1914, is and would be a sleeping car or cars or a parlor car or cars and if any such car or cars of your orator were to be seized on warrant or by direction of the defendant, as such State Comptroller, on a claim for such taxes such car would be taken possession of by the Sheriff of the County to whom such warrant would be directed and taken into his possession and held and sold to satisfy such claim and your orator would be unable to comply with its contract with the railroad to which such car had been furnished and in whose possession it was at the time of such seizure, for the reason that the State of Florida being remote from the place and places where your orator has and neces-
21 sarily keeps its extra and reserve cars for use in emergencies your orator would not be able without considerable delay to

obtain and supply another car or cars to take the place of the car or cars so seized, nor in time to prevent serious inconvenience arising to passengers traveling interstate or to enable your orator to furnish to the railroad company a car or cars to take the place of the car or cars so seized for use in the transportation of the railroad company's passengers and to enable your orator to furnish to such passengers of the railroad the accommodations in such cars which the Act to Regulate Commerce, approved February 28th, 1887, and Acts amendatory thereof, requires your orator as a sleeping car company to furnish for use in accordance with its tariffs duly filed and on file with the Interstate Commerce Commission of the United States, and your orator would thereby be deprived of its property and the use thereof and would be irreparably injured in an amount which cannot be definitely estimated or determined. And your orator further alleges that it has no car in the State of Florida and no car which can or will in the course of business or otherwise be in the State of Florida which is of the value of less than $4,000.00, and that the amount of tax which it is provided in and by said Section 45 should be due and payable on the 1st day of January, 1914, exceeds the sum of $5,200.00, and that your orator has neither made the report provided by said Section 45, to be made January 1st, 1914, nor paid the tax in said section provided to be paid, and that notwithstanding the pendency of said causes hereinbefore set forth the defendant as such said Comptroller now demands that the report for said year be made and the tax provided by said Section 45 to be payable on the 1st day of January, 1914, be paid and that if said report be not made on or before the 15th day of January, 1914, he, the said defendant as such Comptroller, will proceed to enforce the provisions of said Section 45 with respect thereto, and to collect the taxes therein
22 provided for, in which case your orator will be obliged as above and as hereinbefore set forth to either pay the full amount claimed for said taxes with penalty and costs, or to suffer its property to be seized and sold therefor and in any event your orator will be irreparably injured in a sum greatly in excess of $3,000.00.

XII.

And your orator further shows unto your Hon-rs that, in order that the State of Florida may receive any and all sums which may be found to be lawfully due from your orator under the provisions of said Section 45, your orator hereby offers to make a report to this Court under the order thereof, as your Honors may and shall direct, showing the amount of gross receipts of your orator as defined in said Section 45 and to pay into this Honorable Court the amount which said Section 45 provides should be payable on the 1st day of January, 1914, to be either held in this Honorable Court to await the ultimate determination of this cause and thereupon paid in whole or in part to the Treasurer of the State of Florida or repaid to your orator as may be ultimately determined, or, if your honors shall so direct, that the sum or such part thereof as your Honors may and shall direct, be immediately paid over to the Treasurer of said state

upon such terms, under the direction of your honors, as shall insure and make certain the repayment to your orator of the whole or such part thereof as may and shall be ultimately determined to be illegal, to the end that the State of Florida shall not be deprived of its just and lawful dues and that at the same time your orator may and shall be protected from unjust and illegal taxation.

XIII.

For as much as your orator has no adequate remedy at law and can have no adequate relief except in a court of equity, and to
23 that end therefore, your orator prays:

1st. That said Section 45 of Chapter 6421 of the laws of Florida of 1913 may be declared to be unconstitutional and void and any and all taxes claimed to be due from and payable by your orator thereunder as hereinbefore set forth, and which said Section 45 provides shall be due and payable on the 1st day of January, 1914, be declared to be illegal and void.

2nd. May it please your Honors to grant unto your orator a writ of injunction to be issued out of and under the seal of this Honorable Court commanding and enjoining and restraining the defendant, W. V. Knott, as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control or under the direction or control of his successor or successors in said office from making any estimate of the amount of the gross receipts of your orator derived from business done between points in the State of Florida on which a tax is claimed to be due and payable under said Section 45 on the 1st day of January, 1914, or either from such information as he may be able to obtain or otherwise and from adding any penalty to the amount and delivering any warrant directed to any Sheriff of any county of the State of Florida requiring him to collect by levy and sale of property any such tax or taxes and from otherwise or in any manner attempting to collect or to enforce collection of any such tax or taxes until the final determination of this cause, and that thereupon said injunction may be made perpetual and final by the decree of this Honorable Court, and that in the meantime and until a decision can be had upon your orator's motion to be made herein for the injunction herein prayed for during the pendency of this cause, a restraining order be granted restraining the acts sought herein to be enjoined; your orator hereby alleging in that behalf that there is danger
24 of irreparable injury of the kind and character hereinbefore set forth, which your orator here repeats, and which would arise from delay if said acts should not be restrained until your orator's motion for an injunction can be heard.

3rd. That the complainant herein have such other and further relief as may seem to your Honors just and equitable.

May it please your honors to grant unto the complainant a writ of subpœna of the United States of America issued out of and under the seal of this Honorable Court directed to the said W. V. Knott as Comptroller of the State of Florida, commanding him upon a day

certain therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath an answer — oath being hereby expressly waived, all and singular the premises and to stand to perform and abide by such order, direction and decree as may be made in this cause, and complainant will ever pray.

THE PULLMAN COMPANY,
By JNO. C. BURROWES,
Its Dist. Superintendent;
JOHN E. HARTRIDGE,
JOHN E. & JULIAN HARTRIDGE,
Solicitors for Complainant.

JOHN E. HARTRIDGE,
Of Counsel.

25 STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public duly commissioned and qualified to act in and for the state and county aforesaid, John C. Burrowes, who, being duly sworn, deposes and says that he is District Superintendent of The Pullman Company, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the facts therein stated upon complainant's information and belief this affiant believes to be true.

JNO. C. BURROWES.

Subscribed and sworn to before me this 10 day of January, 1914.
[NOTARIAL SEAL.]
E. M. RORABECK,
Notary Public, State of Florida.

My Commission expires Dec. 15, 1915.

26 EXHIBIT A.

$1,405.26. Treasury Department, State of Florida. No. 4240.

COMPTROLLER'S OFFICE, Tallahassee, Fla., Dec. 3", 1908.

Received of The Pullman Co. of Chicago, Ill., *County*, the Treasurer's Receipt for Fourteen Hundred five & 26/100 Dollars on account of Heads of Taxation, as shown in the following statement, viz:

Year when assessed.	License tax.	General revenue.	General School one mill tax.	Pension tax.	State Board of Health tax.	Commission tax.	Department of Agriculture.	Total.
.....	.....	1,405.26	.....	.....	.....	.....	.....	1,405.26

Sleeping Car Tax
To Oct. 31st, 1908.
Chapter 5596, Laws of Fla.

A. C. CROOM, *Comptroller.*

27 EXHIBIT B.

$1,287.18. Treasury Department, State of Florida. No. 3612.

COMPTROLLER'S OFFICE, Tallahassee, Fla., Nov. 27", 1906.

Received of The Pullman Co. of Chicago, Ill., *County*, the Treasurer's Receipt for Twelve hundred eighty-seven & 18/100 Dollars on account of Heads of Taxation, as shown in the following statement, viz:

Year when assessed.	License tax.	General revenue.	General School one mill tax.	Pension tax.	State Board of Health tax.	Commission tax.	Department of Agriculture.	Total.
.....	.....	1,287.18	.....	.....	.....	.....	.....	1,287.18

Sleeping Car Tax
To Oct. 31st, 1906.

A. C. CROOM, *Comptroller.*

28 Endorsed: In the District Court of the United States in and for the Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Original Bill of Complaint. Filed January 14th, 1914, F. W. Marsh, Clerk. John E. Hartridge and G. S. Fernald, Solicitors and of Counsel for Complainant.

And afterwards, to-wit: on the said 14th day of January, A. D. 1914, the Judge of said District Court, the Honorable William B. Sheppard, made, and caused to be entered of record, a Temporary Restraining Order in the said cause, which Order is in the words and figures following, to-wit:

29 In the District Court of the United States.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

Original Bill.

Whereas in the above entitled cause it has been made to appear that irreparable loss or damage will result to the complainant unless a temporary restraining order is granted, restraining W. V. Knott, as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control, from making any estimate of the amount of the gross receipts of the complainant derived from business done between points in the State of Florida on which a tax is claimed to be due and payable under Section 45 of Chapter 6421 of the Laws of Florida of 1913, and from issuing any warrant directed to any sheriff requiring him to collect by levy and sale of property any such tax or taxes.

Now therefore it is ordered and directed that the said W. V. Knott as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control or under the direction or control of his successor and successors in said office, be and they are hereby restrained from making any estimate of the amount of the gross receipts of the Pullman Company derived from business done between points in the State of Florida on which a tax is claimed to be due and payable under Section 45 of Chapter 6421 of the Acts of 1913, on the first day of January 1914, or adding any penalty to the amount and delivering any warrant directed to any sheriff of any county of the state requiring him to collect by levy and sale of property any such tax or taxes and from otherwise or in any manner attempting to
30 collect or to enforce collection of any such tax or taxes until a hearing can be had on and the determination of the application of the complainant herein for an interlocutory injunction and of which notice shall be given within ten days from date to the

Governonr, Comptroller and Attorney General of the State of Florida as in such cases made and provided, and that such notice of hearing therein shall be given for a date on or before the fifteenth of February, 1904, and to be heard at such a date as the Judges of the United States court to whom the application shall be made, as provided by statute, shall fix.

Done and ordered this 14 day of January, 1914.

WM. B. SHEPPARD, *Judge.*

Endorsed: In the District Court of the United States, The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Order Original (Original Bill). Filed Jan. 14, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 26th day of January, A. D. 1914, there issued out of the office of the Clerk of said Court a subpœna to the said defendan*dant*, directed to the Marshal of the said District, which was thereupon delivered to him, and was by him executed and returned into the said Clerk's office, with his return endorsed thereon, which writ, together with the said return, is in the words and figures following, to-wit:

31 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to W. V. Knott, as Comptroller of the State of Florida:

We Command You, and every of you, that you appear before the Judge of the District Court of the United States of America, for the Fifth Circuit and Northern District of Florida, at Pensacola, Fla., in said District, on the 16th day of February, A. D., 1914, to answer to a bill of complaint exhibited against you by The Pullman Company, a corporation under the laws of the State of Illinois, with principal place of business at Chicago, Cook County, Illinois, and filed in the Clerk's office of said Court, and then and there to receive and abide by such judgment and decree as said Court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the Marshal of the United States, to execute and return.

Witness the Honorable Wm. B. Sheppard, Judge of the District Court of the United States and the Seal of this Court, at the City of Pensacola, Fla., in the said District, this 26th day of January, A. D. 1914.

[SEAL.] F. W. MARSH, *Clerk.*

JOHN E. HARTRIDGE AND
G. S. FERNALD,
Solicitor- for Compl't.

Memorandum.

The above named Defendant is notified that unless he shall enter his appearance and Answer in the Clerk's office of said Court, at Pensacola, Fla., aforesaid, on or before twenty days after service hereof on him, the complaint will be taken against him as confessed and a decree entered accordingly.

[SEAL.]

F. W. MARSH, *Clerk.*

32 Endorsed: Civ. 1117. District Court, United States, Northern District of Florida. Pullman Co. vs. W. V. Knott. Chancery Subpœna. Filed Feb. 4, 1914. F. W. Marsh, Clerk.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Florida, ss:

I hereby certify that I served the annexed Chancery Subpœna on the therein-named W. V. Knott, as Comptroller of the State of Florida, by handing to and leaving a true and correct copy thereof with the within named W. V. Knott, personally at Tallahassee, Fla., in said District on the 29" day of January, A. D. 1914.

JAS. B. PERKINS,
U. S. Marshal,
By W. L. STRICKLAND, *Deputy.*
J. B. P.

Filed Feb. 4, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 31st day of January, A. D. 1914, was filed in the office of the Clerk of said Court the Notice of Hearing on Original Bill, which is in the words and figures following, to-wit:

33 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY, Complainant,
vs.
W. V. KNOTT, as Comptroller of the State of Florida, Defendant.

To the Honorable Park Trammell, Governor of the State of Florida; Honorable Thomas F. West, Attorney General of the State of Florida; Honorable W. V. Knott, Comptroller of the State of Florida:

You, and each of you, will please take notice that I will, on Monday, the ninth day of February, A. D. 1914, at eleven o'clock A. M., or as soon thereafter as I can be heard, at New Orleans, in the State of Louisiana, or at such place and at such date thereafter as may be fixed pursuant to the United States Statute in such case made and

provided, move before the Honorable Don A. Pardee, Circuit Court Judge in and for the Fifth Judicial Circuit of the United States, and such Judges as may be called in to hear same, or before such Judge or Judges as may be designated to hear same, for a temporary injunction to restrain and enjoin Honorable W. V. Knott, as Comptroller, the defendant herein, and all persons acting by or under his authority or direction from making any estimate of the amount of the gross receipts of The Pullman Company derived from business done between points in the State of Florida, either from
34 such information as the said W. V. Knott, the defendant, may be able to obtain upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent. as a penalty, and from issuing and delivering, or sending any warrant directed to any sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 45 of Chapter 6421 of the Laws of Florida of 1913, and from seizing or taking into custody any of the cars, or other property, of The Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said W. V. Knott, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 45 of Chapter 6421 of the Laws of Florida, on the ground that said law is unconstitutional and void.

JOHN E. HARTRIDGE,
Attorney for The Pullman Company.

Service of a true copy of the foregoing notice received and accepted this the 17 day of January, A. D. 1914.

PARK TRAMMELL,
Governor of the State of Florida.
T. F. WEST,
Attorney General of the State of Florida.
W. V. KNOTT,
Comptroller of the State of Florida.

35 Endorsed: United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller. Notice of Hearing on Original Bill. John E. Hartridge, Solicitor for Complainant. Filed Jan. 31, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, the Honorable Don A. Pardee, the Honorable David D. Shelby, and the Honorable W. I. Grubb, made and caused to be entered of record, an Order denying Injunction, which is in the words and figures following, to-wit:

36 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY
versus
W. V. KNOTT, as Comptroller of the State of Florida.

Original Bill.

Filed January 14, 1914.

This cause coming on to be heard before Honorable Don A. Pardee, Circuit Judge, in the absence of Honorable William B. Sheppard, District Judge of the District, upon the application of the complainant, upon the original bill filed January 14, 1914, for an interlocutory injunction restraining the enforcement of a State statute upon the ground of the unconstitutionality of said statute, and thereupon, in pursuance of the statute in such cases made and provided, Honorable D. D. Shelby, Circuit Judge, and Honorable W. I. Grubb, District Judge, were called and appeared to assist in the hearing and determination of said application; and it appearing to the Court thus organized that due notice of said application has been served upon Honorable Park Trammel, Governor of the State of Florida, Honorable Thomas G. West, Attorney General of the State of Florida, and Honorable W. V. Knott, Comptroller of the State of Florida; and John E. Hartridge, Esq., counsel for complainant, and Honorable Thomas G. West, Attorney General of the State of Florida, counsel for defendant, appearing, and both parties being ready for hearing and consenting thereto, on this the 9th day of February, 1914, the application was argued and submitted for decision;

Whereupon, upon due consideration the application for an interlocutory injunction was denied.

Witness our hands this 10th day of February, A. D. 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

[Endorsed:] The United States District Court, Northern District of Florida. In Equity. The Pullman Company vs. A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida. Order denying injunction. Original bill.

37 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller. Order denying Injunction in original Bill. Filed Feb. 12, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court an Order allowing certain money to be paid into Court, which Order was made and caused to be entered of record, by the Honorable Don A. Pardee, the Honorable David D. Shelby, and the Honorable W. I. Grubb, and was in the words and figures following, to-wit:

38 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY, a Corporation,
versus
W. V. KNOTT, as Comptroller of the State of Florida.

This cause coming on to be heard upon an application for an interlocutory injunction before Don A. Pardee and David D. Shelby, Circuit Judges, and W. I. Grubb, District Judge, and the said David D. Shelby, Circuit Judge and W. I. Grubb, District Judge, having been called in for the hearing as required by law, sitting in the City of New Orleans, and it appearing that due notice of said hearing and said application of more than five days had been given to the Honorable Park Trammell, Governor of the State of Florida, and Thomas F. West, Attorney General of the State of Florida, and was argued upon the bill of complaint by John E. Hartridge upon the part of complainant, and by Honorable Thomas F. West, appearing for the defendant and said State of Florida, and an order having been entered denying said application for an interlocutory injunction, and the complainant having filed its petition of appeal and praying that same operate as a supersedeas and its assignment of error thereon, and an order having been entered, allowing said appeal and bond having been given for the cost thereon, as in such cases made and provided.

Now, therefore, it is ordered upon payment by the complainant into this Court, as tendered in the 12th paragraph of bill, within the next twenty days and in the meantime, that said appeal do operate as a supersedeas and the defendants are hereby enjoined, as prayed for in the bill, pending the hearing and determination of the appeal prayed for and taken in this case to the Supreme Court of the United States, and when such determination of said case is had in said Court a further order will be made by this Court in this case.

Done and ordered this 11th day of February, 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

39 Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Original Restrainong Order on the therein-named W. V. Knott, Comptroller of the State of Florida by handing to and leaving a true and correct copy thereof with the aforesaid W. V. Knott, Comptroller of the State of Florida personally at Tallahassee, Fla. in said District on the 14th day of Feb., A. D. 1914.

JAS. B. PERKINS,
U. S. Marshal.
By W. L. STRICKLAND, *Deputy.*

Filed Feb. 16, 1914. F. W. Marsh, Clerk.

[Endorsed:] In the United States District Court, Northern District of Florida. In Equity. The Pullman Company vs. W. V. Knott, as Comptroller. Order allowing money to be paid into Court and restraining W. V. Knott, Comptroller.

40 Endorsed: In the United States District Court, Northern District of Florida. In Equity. The Pullman Company vs. W. V. Knott, as Comptroller. Order allowing Money to be paid into Court. Filed Feb. 12, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court a Petition for Appeal in said cause, which Petition is in the words and figures following, to-wit:

41 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
versus
W. V. KNOTT, as Comptroller of the State of Florida.

Bill for Injunction.

The Pullman Company, a corporation organized and existing under the laws of the State of Illinois, plaintiff in the above entitled cause, feeling itself aggrieved by the order or decree of this court, entered on the 11th day of February, 1914, in the above entitled cause by Circuit Court, Judges Don A. Pardee, D. D. Shelby, and District Judge, W. I. Grubb, denying, after notice and hearing as provided by the Act of Congress, as in such cases made and provided, the interlocutory injunction, does hereby pray and appeal

from said order or decree to the Supreme Court of the United States, as is in and by the Act of Congress, — such case made and provided, and prays that this appeal may operate as a supersedeas to the order denying said interlocutory injunction and that said appeal may be allowed and that a true copy of the record and proceedings in this case duly authenticated may be sent to the Supreme Court of the United States.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

[Endorsed:] In the District Court of the United States, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Petition for Appeal. John E. Hartridge, Attorney and Solicitor for Plaintiff.

42 Endorsed: In the District Court of the United States, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Petition for Appeal. John E. Hartridge, Attorney and Solicitor for Plaintiff. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court the Assignment of Errors in the said cause, which was in the words and figures following, to-wit:

43 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
versus
W. V. KNOTT, as Comptroller of the State of Florida.

Now comes the plaintiff, the Pullman Company, a Corporation under the laws of the State of Illinois, by its attorney, John E. Hartridge, and says that in the record of proceedings in the above entitled cause, there is manifest error in this, to-wit:

1. The Court erred in deciding and denying an interlocutory injunction to the plaintiff as prayed in the original bill of complaint.
2. The Court erred in deciding and holding that the plaintiff had no standing in equity to resist the tax levied and against which relief was sought.
3. The Court erred in holding the Act of the State of Florida complained in the bill of complaint as a constitutional enactment.
4. The Court erred in and by the order made herein denying the interlocutory injunction dated February 10th, 1914.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Assignment of Errors. John E. Hartridge, Attorney for Plaintiff.

44 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Assignment of Errors. John E. Hartridge, Attorney for Plaintiff. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court an Order made and caused to be entered of record by the Honorable Don A. Pardee, the Honorable David D. Shelby, and the Honorable W. I. Grubb, Allowing the said Appeal, which order is in the words and figures following, to-wit:

45 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

Now, on this Eleventh day of February, A. D., 1914, pursuant to the application for appeal, it is ordered that the above appeal be allowed returnable in the Supreme Court of the United States, within thirty days from this date upon the plaintiff, the Pullman Company, a Corporation organized under the laws of the State of Illinois, giving bond with surety in the sum of Two Hundred and Fifty Dollars for the payment of damages and costs, conditioned as required by law, payable to W. V. Knott, Comptroller of State of Florida.

Done and ordered at New Orleans, Louisiana, this Eleventh day of February, A. D., 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge..

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Order Allowing Appeal.

46 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Order Allowing Appeal. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit: upon the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court the Supersedeas Bond in the said cause, which was in the words and figures following, to-wit:

47 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
versus
W. V. KNOTT, as Comptroller of the State of Florida.

Know all men by these presents, That we, The Pullman Company, a corporation created, existing and being under the laws of the State of Illinois, as Principal, and John E. Hartridge and H. J. Clark, as Sureties, are held and firmly bound under W. V. Knott, as Comptroller of the State of Florida, in the full and just sum of Tow Hundred and Fifty Dollars to be paid to the said W. V. Knott, as Comptroller, or his successors in office, to which payment, well and truly to be made, the Pullman Company binds itself, its successors and assigns and the sureties bind severally themselves, their heirs, executors and administrators.

Sealed this 11th day of February, 1914.

Whereas, lately, Circuit Judges Don A. Pardee, and D. D. Shelby, and District Judge, W. I. Grubb, did deny the application for an interlocutory injunction applied for upon the part of the Pullman Company, and the said Pullman Company has *entered* and obtained an order allowing an appeal to reverse the order and decree, denying an interlocutory injunction, so made by said judges, to reverse the order and decree made therein, and a citation directed to the said W. V. Knott, as Comptroller, directing and admonishing him to be and appear at a session of the Supreme Court of the United States on the 11 day of March, A. D., 1914, next.

Now, the condition of above obligation is such that if the said, The Pullman Company, shall prosecute said appeal to effect and answer all damages and costs, if it fail to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE, *Att'y.*
JOHN E. HARTRIDGE.
H. J. CLARK.

Bond accepted.

DON A. PARDEE,
Circuit Judge.

Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Bond Filed Feb. 12, 1914. F. W. Marsh, Clerk.

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Bond.

48 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
versus
W. V. KNOTT, as Comptroller of the State of Florida.

To W. V. Knott, as Comptroller, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, in the United States, wherein The Pullman Company is Appellant and you, W. V. Knott, *is* defendant; to show cause, if any there be, why the order and decree of Circuit Judges Don A. Pardee and D. D. Shelby and District Judge, W. I. Grubb, as within the appeal mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 11th day of February, in the year of our Lord, 1914.

DON A. PARDEE,
United States Circuit Judge.

[Endorsed:] Civ. 1126. In the United States District Court, Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Citation. Original. Filed Feb. 16, 1914. F. W. Marsh, Clerk.

49 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I hereby certify and return that I served the annexed Citation on the therein-named W. V. Knott, Comptroller of the State of Florida by handing to and leaving a true and correct copy thereof with the aforesaid W. V. Knott, Comptroller for the State of Florida, personally at Tallahassee, Fla. in said District on the 14th day of Feb., A. D. 1914.

JAS. B. PERKINS,
U. S. Marshal,
By W. L. STRICKLAND, *Deputy.*

Filed Feb. 16, 1914. F. W. Marsh, Clerk.

50 UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida, do hereby certify that the fore-

going pages, numbered from 1 to 50, constitute and contain a true and perfect transcript of the record and proceedings of the District Court of the United States for the Northern District of Florida, in the case of the Pullman Company, a Corporation, Plaintiff and Appellant, vs. W. V. Knott, as Comptroller of the State of Florida, Defendant and Appellee, as the same remains on file and of record in said Court.

Witness my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 20th day of February, A. D. 1914.

[Seal U. S. District Court, Northern Dist. of Florida, Fifth Circuit.]

F. W. MARSH, *Clerk.*

Endorsed on cover: File No. 24,087. N. Florida D. C. U. S. Term No. 936. The Pullman Company, appellant, vs. W. V. Knott, as Comptroller of the State of Florida. Filed March 9th, 1914. File No. 24,087.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted]384

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED MARCH 9, 1914.

(24,088)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 937.

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 3, 1914.

1 In the District Court of the United States for the Northern District of Florida, at Pensacola, Florida.

Be it remembered, that on the 14th day of January, A. D. 1914, came the Pullman Company a Corporation, by its Solicitors, the Honorable John E. Hartridge and the Honorable G. S. Fernald, and filed in the office of the Clerk of said Court a motion for leave to file a Supplemental Bill of Complaint against W. V. Knott, as Comptroller of the State of Florida, which said Petition is in the words and figures following, to-wit:

2 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, Plaintiff,

vs.

A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida, Defendants.

To the Honorable Judges of the United States District Court in and for the Northern District of Florida:

The petition of The Pullman Company respectfully shows that on or about the 14 day of December, 1911, your petitioner filed its bill in this Honorable Court against A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, praying a writ of injunction restraining the defendant A. C. Croom, as Comptroller, and all persons claiming to act under his direction, to desist from making any estimates of the amount of the gross receipts of your petitioner between points in the State of Florida and from adding to the amount *to the amount* claimed as a tax any estimate of 10% as a penalty, as provided in and by Section 47 of Chapter 5596, laws of Florida, or from issuing or sending out any warrant for any Sheriff to levy upon the property of petitioner, and that said Act be declared null and void, and that W. V. Knott, Treasurer of the State of Florida, be decreed to pay petitioner the sum of $6,971.38 and $30.00 costs, paid by petitioner to the Sheriff

3 of Duval County, Florida, under duress, by virtue of a levy upon a car of defendant.

And petitioner further shows that the defendants being served with process appeared to the said bill, and upon hearing said prayer was denied and an appeal entered to the Supreme Court of the United States which came on to be heard at the October Term thereof 1913, and said Court did decide that by reason of the death of the said A. C. Croom who had in the meantime departed this life, that said suit had abated.

Wherefore, your petitiofer is advised that it is necessary to file a supplemental bill and to bring the said W. V. Knott, as Comptroller

of the State of Florida, before this Court as a party defendant to this suit.

Your petitioner, therefore, prays that leave may be granted it to file a supplemental bill against the said W. V. Knott, as Comptroller of the State of Florida, for the purpose of making him party defendant to this suit, with proper and apt words charging him individually and as such Comptroller, and with such prayer or relief as may be proper and for such other proceedings as it may be advised are proper.

THE PULLMAN COMPANY, *Petitioner,*
By JOHN E. HARTRIDGE.

JOHN E. HARTRIDGE,
Solicitor and of Counsel for The Pullman Company.

4 Endorsed: United States District Court, Northern District of Florida. The Pullman Company, Plaintiff, vs. A. C. Croom, as Comptroller, et al. Defendants. Petition for leave to file Supplemental Bill. John E. Hartridge, Solicitor and of Counsel for The Pullman Company. Filed January 14th, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the said 14th day of January, A. D. 1914, the Judge of said Court made and caused to be entered of record, an Order allowing the filing of the said Supplemental Bill, which is in the words and figures following, to-wit:

5 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, Plaintiff,
vs.
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida, Defendants.

This cause coming on to be heard on the petition of plaintiff for leave to file a supplemental bill herein, and said bill being tendered at the time of the presentation of said petition, and the Court being fully advised, orders and adjudges that the plaintiff have and leave is hereby granted, to file said supplemental bill.

Done and ordered this 14th day of January, 1914.

WM. B. SHEPPARD, *Judge.*

Endorsed: United States District Court, Northern District of Florida. The Pullman Company, Plaintiff, vs. A. C. Croom, as Comptroller, et al., Defendants. Order granting Leave to File Supplemental Bill. Filed January 14th 1914. F. W. Marsh, Clerk. John E. Hartridge, Solicitor and of Counsel for The Pullman Company.

And afterwards, to-wit: on the said 14th day of January, A. D. 1914, was filed in the office of the Clerk of said Court the Supple-

mental Bill of the said Complainant, which is in the words and figures following, to-wit:

6 In the District Court of the United States for the Northern District of Florida.

THE PULLMAN COMPANY, Complainant,
vs.
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida, Defendants.

Supplemental Complaint.

To the Honorable Judges of the United States District Court in and for the Northern District of Florida:

Your orator, The Pullman Company, as complainant, brings this its supplemental bill of complaint against the above named defendant, W. V. Knott, but as Comptroller of the State of Florida, and thereupon complains and says:

I.

That your orator is a corporation created and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business in the City of Chicago, County of Cook, and State of Illinois, and is a resident and citizen of said State of Illinois. That when the above entitled cause was commenced by the filing of the original bill of this complainant therein the said A. C. Croom was Comptroller of the said State of Florida and the said defendant W. V. Knott was the Treasurer of the said State of Florida; that while said action was pending and before this time, but upon what day and date is to your orator unknown, the said A. C. Croom died, and that the said defendant W. V. Knott thereafter became and now is the duly appointed or elected, qualified and acting Comptroller of the State of Florida and is a citizen of said State of Florida and a resident of said district.

II.

That your orator has complied with all of the statutes of the State of Florida requisite to its engaging in business in said
7 state, and has been for more than ten years last past continuously and now is engaged in the business of furnishing sleeping cars and parlor cars to railroad companies for the use of such companies upon their railroads and for the transportation of the passengers of such railroads therein, under written contracts for terms of years, throughout the United States of America and the several states thereof, and in adjacent foreign countries, and has been during all said period and now is engaged in furnishing under such written contracts for terms of years sleeping cars and parlor cars to railroad companies whose railroads run in, into and out of the State of Florida, and that some of your orator's said sleeping cars and parlor cars run and are operated by such railroad com-

panies on their railroads from other states into Florida and from Florida into other states and some of your orator's said sleeping cars and parlor cars run and are operated by such railroad companies between points wholly within the State of Florida. That in such sleeping cars of your orator your orator furnishes sleeping accom-odations and seats and in such parlor cars your orator furnishes reserved and specified seats; to-wit, chairs, and in some of its sleeping and parlor cars your orator furnishes food and refreshment, all such sleeping accom-odations, seats, chairs and food and refreshment being furnished to the passengers of the railroad companies travelling in such cars of your orator.

III.

That your orator now has and for more than ten years last past has had within the State of Florida cars of the kinds hereinbefore referred to running in, into and out of the State of Florida as hereinbefore stated, and that some of said cars have, during all of said time, been property of your orator within the State of Florida and subject to such property taxation therein as might be lawfully provided for by the Legislature of said State of Florida.

By Section 48 of Chapter 4115 of the Laws of Florida of 1893, approved June 2nd, 1893, entitled "An Act for the collection
8 and assessment of revenue," it was provided for the taxation of the property of railroad companies and sleeping and parlor car companies and that sleeping and parlor car companies should on or before January 1st, 1894, and annually thereafter, report to the Comptroller of said State of Florida the total amount of their gross receipts derived from business done between points in that state, and at the same time should pay into the State Treasury the sum of $1.50 upon each $100.00 of such gross receipts, with provisions that if the report should not be made the Comptroller should estimate the gross receipts, add ten per cent. to the amount of the taxes as a penalty and proceed to collect the tax with costs and penalties the same as other delinquent taxes are collected; that in the year 1895 the legislature of Florida re-enacted all of the provisions for taxation of the property of railroad and sleeping and parlor car companies, as above stated, in and by Section 47 of Chapter 4322, being an Act entitled "An Act for the assessment and collection of revenue," approved June 1st, 1895. That no other tax upon the property of sleeping and parlor car companies or upon such companies was ever provided by the laws of the State of Florida until the year 1907; that by Section 46 of Chapter 5596, approved June 18th, 1907, entitled "An Act relating to tax assessments and collection of revenue," it was provided for the assessment and taxation of the property of railroad companies and sleeping or parlor car companies, including sleeping and parlor cars of each of such railroad companies and sleeping and parlor car companies, by ad valorem tax, and it was therein and thereby made the duty of the Comptroller, Attorney General and State Treasurer, to assess all such

9 property of railroad companies and sleeping and parlor car companies from the best information they can obtain, specifying the value thereof in each county, and that the value of the locomotives, engines, passenger, sleeping, parlor, freight, platform, construction and other cars and appurtenances should be apportioned by the Comptroller pro rata to each mile of main track, branch, switch, spur track and side track, and that the proportionate value thereof should be assessed in and by the counties, cities and towns through which the railroad ran, as provided by law and that upon the value thus ascertained and apportioned taxes should be assessed the same as the property of individuals. That in and by said Section 46 railroad companies and sleeping and parlor car companies are treated and the property of each such companies is and are treated in common and the cars of sleeping and parlor car companies are treated the same as cars of railroad companies and as the same character of property used in transporting passengers by railroad and are subject to the same ad valorem taxes. That also by Section 47 of the same chapter, there was re-enacted in all the material particulars and substantially word for word the provisions theretofore contained in said statute of 1893 and said statute of 1895, providing for a tax to be computed upon the gross receipts of sleeping and parlor car companies at $1.50 on each $100.00 thereof, as hereinbefore set forth, and thereby provided for a further tax upon the property of sleeping car and parlor car companies in addition to the ad valorem tax therein provided in and by said Section 46.

That in said year 1907 the Legislature of said State of Florida also enacted Chapter 5597, entitled "An Act imposing license and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to comply with the provisions thereof," approved June 1st, 1907, and therein and thereby provided for a state license tax upon com-

10 panies engaged in sleeping car or parlor car business, for the transaction of such business, of $25.00 for each sleeping car and each parlor car, and for each such car with buffet $40.00, on payment of which license tax it was therein provided a license to engage in such business should be issued, and prohibited any person, firm or corporation from engaging in the transaction of said business unless a state license therefor shall have been procured, and also therein authorized counties, cities and towns within which the business should be engaged in to impose further license taxes of the same kind.

That said Chapter 5597 did not nor did any other statute of the State of Florida then in force, or at any time since in force, provide that a further tax based on gross receipts or otherwise should be required for the privilege of engaging in the sleeping car or parlor car business.

That said statutes of 1907 hereinbefore referred to were since their enactment, and remained, in force during the year 1911 and during all the time herein complained of when the alleged tax was claimed to have accrued and become payable, the enforcement of which

your orator in this its bill of complaint seeks to enjoin and set aside.

That on or about the 1st day of October, 1907, and during the year next thereafter, and before the 1st day of October, 1908, your orator paid to the proper officer, as specified in said Chapter 5597, license taxes for the transaction of its business which is hereinbefore described during said year, as provided in and by said Chapter 5597, and received from the officer designated in said chapter written licenses therefor issued by the Comptroller of said state substantially if not exactly as in said chapter provided. And likewise in each year thereafter beginning on the 1st day of October your
11 orator has paid license taxes as provided in and by said Chapter 5597, and as hereinbefore set forth with respect to the license taxes paid in the year beginning October 1st, 1907, and has in each of said years thereafter received licenses for transacting its business in each of said years, issued in and for each of said years, respectively, as hereinbefore set forth with respect to said year ending October 1st, 1907, and that said license taxes so paid by your orator for the year ending October 1st, 1911, amounted to and was the sum of $4,884.00, and for the year ending October 1st, 1912, amounted to and was the sum of $4,759.00.

That in the year 1908, the first tax year after the taking effect of said Chapter 5596, laws of 1907, your orator's cars and other property in the State of Florida, including the same proportion of the cars of your orator used partly within and partly without said state that the mileage over which such cars were used within the state bore to the whole mileage over which they were used within and without the state, were assessed by the Comptroller, Attorney General and State Treasurer of said State of Florida, and the value thereof as assessed was apportioned by the Comptroller to the counties, cities and towns through which the railroad over whose lines your orator's cars ran, as provided in Section 46 of said Chapter 5596, and your orator fully paid all the state, county, city and town taxes which were levied thereon for said year; and that in and for each year thereafter the said property and all of the property of your orator in said State of Florida, including a proportion as hereinbefore set forth of your orator's cars and other property used partly within and partly without said State of Florida, has been assessed by the Comptroller, Attorney General and Treasurer of said state, and the assessed value apportioned by the Comptroller to the counties, cities and towns as above alleged, and your orator has likewise paid upon its said property so assessed for each of said years including said years 1911 and 1912 all the state, county, city and town taxes levied thereon
12 on the same basis of assessment and at the same rate and rates of taxation as is and are imposed on similar property of railroad companies and upon all other property in the same taxing jurisdictions of said state.

That the amount of said ad valorem taxes for the year ending December 31st, 1911, paid by your orator, was $7,097.95, and for the year ending December 31st, 1912, paid by your orator, was $6,650.45.

V.

That ever since the passage of the Act of the Legislature hereinbefore referred to enacted in 1893 your orator duly and succes-ively made annual reports of its gross receipts thereunder and under said Act hereinbefore set forth enacted in 1895, and continued to pay the taxes computed on such gross receipts after the Act of 1907 was enacted up to and including the year ending October 31st, 1908, and that thereafter your orator became and was advised by its counsel that the imposition of said gross receipts taxes as provided in said Section 47 of Chapter 5596 of the laws of 1907 was not legal and was not constitutional under the Constitution of the State of Florida and that the statute providing therefor was not constitutional either under the constitution of said state or the Constitution of the United States, and your orator, acting under the advice of counsel, has not since that time made the reports or paid the taxes computed upon its said gross receipts except as hereinafter set forth.

13 That on or about January 3rd, 1911, the above named A. C. Croom, then Comptroller of the State of Florida, demanded that your orator make the reports and pay the taxes upon its gross receipts which he claimed was due on the 1st days of January, 1910 and 1911, and that if said payments were not made he, the said Comptroller, would issue his warrant to a Sheriff in Florida commanding him to collect said taxes by levy and sale of the property of your orator; your orator thereupon filed its bill in the Circuit Court for the Northern District of Florida and prayed said court to restrain said Comptroller from taking any proceedings for the collection of said taxes; said court thereupon made a temporary restraining order and on the 11th of February, 1911, heard your orator's motion for an injunction pendente lite and denied the same; your orator thereupon appealed from said order to the Supreme Court of the United States where the same was disposed of in connection with a subsequent appeal upon the same question, as hereinbefore stated. After the denial of said injunction pendente lite your orator on the renewed demand of said Comptroller filed reports for said years under protest and said Comptroller thereupon issued his warrant to the Sheriff of Duval County under which warrant said Sheriff levied upon a parlor car of your orator and threatened to sell the same, and your orator on the 15th day of March, 1911, to prevent a sale of its property paid said Sheriff the sum of $6,971.38 claimed as said tax, and $30.00 costs.

That your orator on or about the 18th day of December, 1911, as appears by the files and records of this Honorable Court, filed its bill in the above entitled cause against the said A. C. Croom, then Comptroller of said state, and said W. V. Knott, then Treasurer of said state, as such Comptroller and Treasurer, respectively, therein and

14 thereby praying this Honorable Court among other things to restrain and enjoin the said Croom as said State Comptroller from taking any proceedings to collect the taxes computed on your orator's said gross receipts which he, the said Croom, as such Comptroller, claimed would be due and payable on the 1st

day of January, 1912. That upon the 21st day of December, 1911, said cause came on to be heard before this Honorable Court (then said Circuit Court) on an application for an injunction pendente lite as prayed for in the original bill herein, which application was then and there denied, and your orator appealed from the order denying the same to the Supreme Court of the United States. That on the — day of November, 1913, said appeal, together with the former appeal hereinbefore referred to, was argued orally and submitted thereon and on briefs theretofore filed in said Supreme Court, and on the 22nd day of December, 1913, said Supreme Court decided and held that by reason of the death of said Croom, which had been suggested to said Court, the Court had no jurisdiction to hear and determine said appeal; that the appeals be dismissed for want of a proper appellee to stand in judgment upon the only question brought to said Supreme Court, and it was so ordered by the Court.

VI.

Your orator further shows unto your Honors that but two kinds of taxes are permitted under the Constitution of Florida, namely, ad valorem taxes and license taxes, and that the Supreme Court of said state has so held specifically, and your orator shows that notwithstanding the holding of this Honorable Court in said cause hereinbefore set forth, which was that said Section 47, Chapter 5596 of the laws of Florida, approved June 18th, 1907, taken in connection with Chapter 5597 of said laws, provides for a graded license tax and is within the legislative power of the State of Florida, your orator is advised by counsel that as a matter of law said tax is not a license tax, graded or otherwise, either by itself or in connection with the tax provided for in said Chapter 5597; that there is no connection between said gross receipts tax and the provisions of said Chapter 5597; that said tax computed on gross receipts was not provided for nor intended as a license tax and that said question was taken to the Supreme Court of the United States on appeal from said order of this Honorable Court, and would therein have been decided by said Supreme Court but for the death of said Croom and the necessary resulting dismissal of your orator's said appeal, as hereinbefore stated. And your orator further shows unto your Honors that prior to the enactment of said laws of 1907 hereinbefore referred to said tax computed on gross receipts was the only tax provided for sleeping and parlor car companies or their property and that under the statute of 1893 hereinbefore referred to and under the statute of 1895 hereinbefore referred to said tax was imposed and collected by the authorities of said state and paid by your orator as a tax upon its property and in lieu of other taxes upon its property, and also under the statute of 1907 (Chapter 5596) up to and including the year ending October 31st, 1908, the tax therefor having been paid on or about December 3rd, 1908, said tax computed on gross receipts was in each year imposed and collected by the authorities of said state as a property or general tax and paid by your orator as an additional tax upon its property, and that said

gross receipts taxes were never paid by your orator as a license tax and were never imposed, collected, received, receipted for or treated by the authorities of said state as a license tax and were never credited on the books and accounts of said state as a license tax; that no license was provided by statute to be issued in consideration of said payment; that no officer of the state or in behalf of the state was authorized to issue a license therefor; that the conduct of sleeping car and parlor car business was not prohibited unless said tax should be paid, nor was the right of your orator or any other person
16 or corporation to do a sleeping or parlor car business within said state made in any way dependent upon the payment of said tax computed on gross receipts in either or any of said statutes of Florida or in any other statute of Florida, nor was it provided by said Section 47 or by any other provision of any statute of Florida that any privilege or permission or license to do anything should be granted in consideration or upon payment of such tax or that a sleeping or parlor car company should have and derive any privilege permission or advantage whatsoever by reason of payment of the tax provided in said Section 47 that it would not otherwise have.

A copy of the receipt of the State Comptroller for the said tax paid by your orator November 27th, 1906, for the year ending October 31st, 1906, and computed on the gross receipts for said year, marked Exhibit "A", issued under the statute of 1895, and a copy of the receipt for the year ending October 31st, 1908, dated December 3rd, 1908, marked Exhibit "B", issued under said statute of 1907, are hereto attached and hereby referred to.

And your orator further shows and alleges that the Comptroller of the State of Florida is not nor is any other official of said state or acting on behalf of said state or by authority of the laws thereof authorized or empowered to make any assessment or impose any tax upon the gross receipts of your orator as and for a license tax nor authorized to impose any other or further license taxes upon your orator for the transaction of its business or upon its business than the license taxes provided in and by said Chapter 5997, laws of 1907, as hereinbefore stated, and as in said last named chapter provided, and your orator further alleges and charges that the provisions of said statute of 1893 hereinbefore alleged requiring payment of a tax computed upon gross receipts of sleeping and parlor car companies
17 and the same provision in the Act of 1895, as hereinbefore alleged, was provided as and for a property tax and was in lieu of other taxes upon the property of such companies and was not imposed as a license tax, and that said Section 47 of Chapter 5596 of the Acts of 1907 provided for said tax to be computed on gross receipts as and for another and further tax upon the property of such companies in addition to the ad valorem tax thereon provided for in said chapter. And that the provisions of said Section 47 are, and all proceedings thereunder are, and any tax imposed thereunder is, an attempt to impose and collect another and further and additional tax upon the property of such companies over and above the ad valorem tax thereon and as applied to your orator is an attempt to

tax the property of your orator twice for substantially the same period of time.

VII.

And your orator further shows that, as hereinbefore alleged, Section 46 of Chapter 5596 of the laws of Florida for 1907, which is still in force provides for the return and taxation of the cars and other property of railroad companies and of sleeping and parlor car companies and thereunder the cars of sleeping and parlor car companies are treated and subjected to the same ad valorem tax as cars of railroad companies and are treated as the same character of property used in furnishing transportation service on carriers by railroad; that the cars of your orator in Florida are furnished by your orator to railroads running in or into and out of the state under contracts as hereinbefore alleged and are delivered into the possession and control of the railroad companies and are by said railroad companies operated and used for the transportation of their passengers desiring sleeping or parlor car accommodations on their trains, and said cars are at all times while in said state in the actual possession and control of said railroad companies and form in fact a part of the transportation equipment of such railroad com-
18 panies, and that of the revenue earned therein by far the greater part and on the average about eighty (80) per cent. is revenue of the railroad company for transportation and about twenty (20) per cent. is revenue of your orator for the accommodations and service in said cars furnished by your orator; that railroad companies and sleeping and parlor car companies in the State of Florida pay the same ad valorem tax, to-wit a tax on all their property; that each pays the ad valorem taxes on its property and in addition thereto each of such companies is required to pay a license tax for the privilege of conducting its business; the railroad license tax is ten dollars for each mile of its railroad track in the state and of sleeping and parlor car companies is $25.00 each for sleeping and parlor cars and $40.00 if such cars have a buffét. The sleeping and parlor car companies in addition to the ad valorem tax and the license tax as hereinbefore stated were and are required by said Section 47 of Chapter 5596, laws of 1907, to pay said tax of $1.50 on each $100.00 of their gross receipts.

That by the provision for the taxation of sleeping and parlor car companies provided in said Section 47 of Chapter 5596 a different rule was and is provided from that provided by the laws of Florida for ascertaining and imposing taxes upon other property within the state; that neither the constitution nor the laws of the State of Florida permit the classification of property for the purposes of taxation by ownership, kind or use or otherwise than as provided and limited in the constitution, which is property subject to taxation and property to be exempted from taxation, and that the Legislature of the State of Florida has not classified or attempted to classify the property of said state for the purposes of taxation, and that there is no law of Florida under which the same is or can be so classified, except as in said constitution classified,

as hereinbefore stated, but all property subject to taxation must be taxed by uniform and equal rate and at a just valuation.

19 That the legislature of said state, in enacting the provisions of said Section 47, and the Comptroller of said state in taking proceedings thereunder for the collection of the taxes therein provided does and will in fact impose taxes upon your orator's property by a rule and rate which is different from the rule and rate under which other property within the State of Florida is assessed and taxed, and that said Section 47 does not provide for the imposition of taxes upon the property of your orator by uniform and equal rate and just valuation or upon any valuation or by any uniformity or equality, and thereby the provisions of Section 1 of Article 9 of the Constitution of Florida are violated and a material and substantial discrimination is made against your orator and its property. That said Section 47 provides for the imposition of a tax which would and will, if enforced against your orator deprive your orator of its property without due process of law and would and will be a denial of the equal protection of the laws to your orator both in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that your orator's said property would not be taxed by uniform rate and just valuation nor, as to said tax computed on gross receipts, upon any valuation or by any uniformity or equality, but that your orator's property would be taxed twice; once by ad valorem based upon the valuation thereof and again by computing an additional tax thereon at the rate of $1.50 on each $100.00 of the receipts of said property from the business done therewith and therein, while no other property in the State of Florida is subjected to said tax or to double taxation.

VIII.

That if said Section 47 of Chapter 5596 of the laws of 1907 did provide for a license tax either by itself or in connection with the license taxes provided in and by said Chapter 5597 of the same year, then your orator alleges and charges that the same was

20 not based upon a just and reasonable classification of persons or of property and business for the purpose of license and the imposition of license taxes, but was an unjust and arbitrary exaction imposed upon sleeping and parlor car companies engaged in furnishing accommodations and service in their cars to persons who travel therein on the railroads of Florida and in connection with the transportation of such persons, and was and is not imposed upon any person or any other company or companies or class of companies, nor upon the earnings or receipts of any other person or company, and, if said Section 47 did provide for a license tax then a different rule was thereby provided for the license and license taxes of sleeping and parlor car companies from the rule provided for individuals and for other companies, and that thereby sleeping car and parlor car companies were, and especially your orator was, by said statutes and rule, materially and substantially discriminated against, and a tax computed upon gross receipts of sleeping and parlor car companies and upon the gross receipts of

your orator as provided in said Section 47 would, if enforced against your orator, deprive your orator of its property without due process of law and would be a denial of the equal protection of the laws to your orator, both in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

IX.

That there is not in said Section 47 of Chapter 5596 of the laws of 1907 or elsewhere in the laws of Florida any provision for a notice to sleeping and parlor car companies with respect to the amount of the estimated gross receipts to be made by the State Comptroller, if such company shall not make the report, or for any hearing with respect to the amount of such taxes to be fixed by the Comptroller in such case or any provision whatever for a hearing to be given to such companies thereon, nor is there any provision of any law of the State of Florida by or under which such sleeping
21 or parlor car company could obtain a hearing, as to the amount of the estimate of such gross receipts or the amount of taxes to be imposed thereon in case it should not make the report provided in said Section 47, nor is there any method provided for the ascertainment of any information by the Comptroller regarding such gross receipts nor is there any limitation upon the judgment or discretion of the Comptroller in estimating the amount of such gross receipts and so far as said Comptroller's action is defined in and by said Section 47 he may arbitrarily estimate the amount of such gross receipts and your orator repeats that there is no way provided by law by which such sleeping or parlor — company can have or obtain a hearing upon the question of the correctness or accuracy of such estimate, and your orator alleges and charges that by said Section 47 it is provided that the property of your orator may be taken and your orator be deprived of its property without due process of law and without a hearing with respect to the amount which your orator may and shall be called upon to pay as a tax claimed to be due under said Section 47, and for which your orator's property may be seized and sold and that no means are provided by which your orator can or could release its property so seized and held for sale to satisfy such claims for taxes, except by payment of the full amount of such taxes claimed with the penalty and costs thereon.

X.

That your orator is advised and believes that there is no statute of the State of Florida under and by which taxes claimed to be illegal may be paid under protest and an action had to recover the same or to recover any money paid or alleged to have been paid for illegal taxes, and that the Supreme Court of the State of Florida has heretofore decided that taxes so paid cannot be recovered from the official to whom paid even though such official has not paid the money over to the state, and for that reason your orator is deprived by the laws of Florida of a judicial hearing upon the amount and

legality of said claim for taxes and that your orator has
22 under the laws of Florida no remedy at law. And your orator is advised that neither the State Comptroller nor any other official of Florida receiving taxes is responsible personally to the tax-payer therefore or for property seized to satisfy the tax, even though such taxes shall thereafter be held illegal.

XI.

That your orator has no property in the State of Florida in addition to its cars, and their equipment, except a small quantity of office desks and furniture of small value and which would be inadequate to satisfy the amount provided by said Section 47 to have been due and payable as taxes on the 1st day of January, 1912. That your orator's cars and equipment thereof within the State of Florida are and is for the most part employed in interstate commerce and that both its cars and equipment so employed in interstate commerce and its cars and the equipment thereof employed for the time being between points wholly within the State of Florida are subject to the direction of the railroad companies to whom the same are furnished and employed, are liable to employment at any time upon interstate lines and that said cars which are for the time being employed between points wholly within the State of Florida are also engaged in interstate commerce and in carrying passengers travelling from other states into Florida and from Florida into other states, and that all of your orator's cars which run in the State of Florida are employed in and by the railroads in transporting their passengers in interstate commerce, and therein your orator furnishes to such interstate passengers as well as passengers travelling between points wholly within the state the accom-odations in such cars as hereinbefore described. That the only property your orator has in Florida sufficient to satisfy the claim for such taxes as said Section 47 provides to be due and payable January 1st, 1912, is and would be a sleeping car or cars or a parlor car or cars and if any such car or cars of your orator were to be seized on warrant or by direction of the defendant Knott, as such State Comptroller, on a claim for such taxes such car would be taken possession of by the Sheriff of the county to whom such warrant would be directed and taken into
his possession and held and sold to satisfy such claim and
23 your orator would be unable to comply with its contract with the railroad to which such car had been furnished and in whose possession it was at the time of such seizure, for the reason that the State of Florida, being remote from the place and places where your orator has and necessarily keeps its extra and reserve cars for use in emergencies, your orator would not be able without considerable delay to obtain and supply another car or cars to take the place of the car or cars so seized, nor in time to prevent serious inconvenience arising to passengers travelling interstate or to enable your orator to furnish to the railroad company a car or cars to take the place of the car or cars so seized for use in the transportation of the railroad company's passengers and to enable your orator to furnish to such passengers of the railroad the accom-odations in such

cars which the Act to Regulate Commerce, approved February 28th, 1887, and Acts amendatory thereof, requires your orator as a sleeping car company to furnish for use in accordance with its tariffs duly filed and on file with the Interstate Commerce Commission of the United States, and your orator would thereby be deprived of its property and the use thereof and would be irreparably injured in an amount which cannot be definitely estimated or determined. And your orator further alleges that it has no car in the State of Florida and no car which can or will in the course of business or otherwise be in the State of Florida which is of the value of less than $4,000.00, and that the amount of tax which it is provided in and by said Section 47 should be due and payable on the 1st day of January, 1912, exceeds the sum of $3,900.00, and that your orator has neither made the report provided by said Section 47 to be made January 1st, 1912, nor paid the tax in said section provided to be paid, and that notwithstanding the pendency of this cause and the dismissal of the appeal therein taken as hereinbefore set forth, without a determination of the questions involved, the said defendant Knott, as
24 said Comptroller, now demands that the report for said year be made and the tax provided by said Section 47 to be and to have been payable on the 1st day of January, 1912, be paid, and on or about the 24th day of December, 1913, made demand on your orator in writing of date December 23rd, 1913, that the report and payment claimed to be due for said last named year, together with the report and payment claimed to be due for the years ending October 31st, 1912 and 1913, and claimed to be payable on the 1st day of January, 1913 and 1914, respectively, although enjoined by order of this Honorable Court made in a cause therein now pending, from taking proceedings to collect the tax claimed for said year ending October 31st, 1912, and demands that the reports and payments for each of said years be made on or before the 15th day of January, 1913, and your orator is informed and believes and upon such information and belief alleges that the reason and the only reason that said defendant Knott, as such Comptroller, has refrained from taking action with respect to said report and payment for the year ending October 31st, 1911, as provided by said Section 47 in case the report and payment be not made, was because of the pendency of said appeals in the Supreme Court of the United States, and because upon a bill filed by your orator in this Honorable Court against the said defendant Knott, as such Comptroller, your orator applied to this Honorable Court and was granted a temporary injunction as prayed for in your orator's bill in said cause with respect to the taxes claimed to be due and payable January 1st, 1913, but that action of the defendant Knott as such Comptroller with respect to the taxes claimed to be due and to have been payable on the 1st day of January, 1912, which are the subject of this cause, has not been enjoined. And said defendant Knott, as such Comptroller, now threatens to proceed, and your orator verily be-
25 lieves that he will proceed, to enforce the provisions of said Section 47, with respect thereto, and to collect the taxes therein provided for, in which case your orator will be obliged, as

above and as hereinbefore set forth, to either pay the full amount claimed for said taxes with penalty and costs or suffer its property to be seized and sold therefor, and in any event your orator, in case of such proceedings on the part of said defendant Knott, as such Comptroller, will be irreparably injured as hereinbefore set forth in a sum greatly in excess of $3,000.

XII.

And your orator further shows unto your honors that, in order that the State of Florida may receive any and all sums which may be found to be lawfully due from your orator under the provisions of said section 47, your orator hereby offers to make a report under the order of the court and as your honors may and shall direct, showing the amount of gross receipts of your orator as defined in Section 47 and to pay into this honorable court the amount which said Section 47 provides should be payable on the 1st day of January, 1912, to be held in this honorable court to await the ultimate determination of this cause and thereupon paid in whole or in part to the Treasurer of the State of Florida or repaid to your orator as may be ultimately determined, to the end that the State of Florida shall not be deprived of its just and lawful dues and that at the same time your orator may and shall be protected from unjust and illegal taxation.

XIII.

For as much as your orator has no adequate remedy at law and can have no adequate relief except in a court of equity, and to that end, therefore, your orator prays:

1st. That said Section 47 of Chapter 5596 of the Laws of Florida of 1907 may be declared to be unconstitutional and void and any and all taxes claimed to be due from and payable by your
26 orator thereunder as hereinbefore set forth, and which said section provides shall be due and payable on the 1st day of January, 1912, be declared to be illegal and void.

2nd. May it please your Honors to grant unto your orator a writ of injunction to be issued out of and under the seal of this Honorable Court commanding and enjoining and restraining the defendant, W. V. Knott, as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control or under the direction or control of his successor or successors in said office from making any estimate of the amount of the gross receipts of your orator derived from business done between points in the State of Florida, on which a tax is claimed to have been due and payable under said Section 47 on the 1st day of January, 1912, either from such information as he may be able to obtain or otherwise and from adding any penalty to the amount so estimated or claimed and from issuing and delivering any warrant directed to any Sheriff of any county of the State of Florida requiring such Sheriff to collect by levy and sale of property, any amount claimed as tax or taxes and from otherwise or in any manner

attempting to collect or to enforce collection of any such amount claimed as tax or taxes until the final determination of this cause, and that thereupon said injunction may be made perpetual and final by the decree of this Honorable Court, and that in the meantime, and until a decision can be had upon your orator's motion to be made herein for the injunction herein prayed for during the pendency of this cause, a restraining order be granted restraining the acts sought herein to be enjoined; your orator hereby alleging in that behalf that there is danger of irreparable injury of the kind and character hereinbefore set forth, which your orator here
27 repeats, and which would arise from delay, if said acts should not be restrained until your orator's motion for an injunction can be heard.

3rd. That the complainant herein have such other and further relief as may seem to your honors just and equitable.

May it please your honors to grant unto the complainant a writ of subpœna of the United States of America issued out of and under the seal of this Honorable Court directed to the said W. V. Knott as Comptroller of the State of Florida, commanding him upon a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court then and there to answer, but not under oath, an answer under oath being hereby expressly waived, all and singular the premises and to stand to perform and abide by such order, direction and decree as may be made in this cause, and complainant will ever pray.

THE PULLMAN COMPANY,
By JOHN C. BURROWES, *its Dist. Supt.*
JOHN E. HARTRIDGE,
JOHN E. & JULIAN HARTRIDGE,
Solicitors for Complainant.

JOHN E. HARTRIDGE,
Of Counsel.

28 STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public duly commissioned and qualified to act in and for the state and county aforesaid, John C. Burrowes, who, being duly sworn, deposes and says that he is District Superintendent of The Pullman Company, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof and that the facts therein stated upon complainant's own knowledge are true, and the facts therein stated upon complainant's information and belief this affiant believes to be true.

JNO. C. BURROWES.

Subscribed and sworn to before me this 10 day of January, 1914.
[NOTARIAL SEAL.] E. M. RORABECK,
Notary Public, State of Florida.

My Commission expires Dec. 15, 1915.

29

EXHIBIT A.

$1,287.18. Treasury Department, State of Florida. No. 3612.

COMPTROLLER'S OFFICE, Tallahassee, Fla., Nov. 27", 1906.

Received of The Pullman Co. of Chicago, Ill., *County*, the Treasurer's Receipt for Twelve hundred eighty-seven & 18/100 Dollars on account of Heads of Taxation, as shown in the following statement, viz:

Year when assessed.	License tax.	General revenue.	General school one mill tax.	Pension tax.	State Board of Health tax.	Commission tax.	Department of Agriculture.	Total.
.....	.....	1,287.18	.....	.....	.....	.....	.....	1,287.18

Sleeping Car Tax
To Oct. 31st, 1906.

A. C. CROOM, *Comptroller.*

30

EXHIBIT B.

$1,405.26. Treasury Department, State of Florida. No. 4240.

COMPTROLLER'S OFFICE, Tallahassee, Fla., Dec. 3", 1908.

Received of The Pullman Co. of Chicago, Ill., *County*, the Treasurer's Receipt for Fourteen hundred five & 26/100 Dollars, on account of Heads of Taxation as shown in the following Statement, viz:

Year when assessed.	License tax.	General revenue.	General school one mill tax.	Pension tax.	State Board of Health tax.	Commission tax.	Sale of fertilizer stamps.	Sale of feed stamps.	Total.
.....	.....	1,405.26	.....	.....	.....	.....	.....	.....	1,405.26

Sleeping Car Tax
To Oct. 31st, 1908.
Chapter 5596, Laws of Fla.

A. C. CROOM, *Comptroller.*

31 Endorsed: In the District Court of the United States in and for the Northern District of Florida. The Pullman Company vs. W. V. Knott, as Comptroller of the State of Florida. Supplemental Bill of Complaint. Filed January 14th, 1914. F. W. Marsh, Clerk. John E. Hartridge, G. S. Fernald, Solicitors and of Counsel for Complainant.

Whereupon, to-wit: the said 14th day of January, A. D. 1914, the Judge of said Court made and caused to be entered of record, a Temporary Restraining Order, which is in the words and figures following, to-wit:

32 In the District Court of the United States.

THE PULLMAN COMPANY, a Corporation,
vs.
W. V. KNOTT, as Comptroller of the State of Florida.

Supplemental Bill.

Whereas in the above entitled cause it has been made to appear that irreparable loss or damage will result to the complainant unless a temporary restraining order is granted, restraining W. V. Knott, as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control, from making any estimate of the amount of the gross receipts of the complainant derived from business done between points in the State of Florida on which a tax is claimed to be due and payable under Section 47 of Chapter 5596 of the Laws of Florida of 1907, and from issuing any warrant directed to any sheriff requiring him to collect by levy and sale of property any such tax or taxes.

Now therefore it is ordered and directed that the said W. V. Knott as Comptroller of the State of Florida, his successor and successors in office and all persons claiming to act under his direction or control or under the direction or control of his successor and successors in said office, be and they are hereby restrained from making any estimate of the amount of the gross receipts of the Pullman Company derived from business done between points in the State of Florida on which a tax is claimed to be due and payable under section 47 of Chapter 5596 of the Acts of 1907, on the first day of January, 1912, or adding any penalty to the amount and delivering any warrant directed to any sheriff or any county of the state requiring him to collect by levy and sale of property any such tax or taxes and
33 from otherwise or in any manner attempting to collect or to enforce collection of any such tax or taxes until a hearing can be had on and the determination of the application of the complainant herein for an interlocutory injunction and of which notice shall be given within ten days from date to the Governor, Comptroller and Attorney General of the State of Florida as in such cases made and provided, and that such notice of hearing therein shall be given for a date on or before the fifteenth of February 1914, and

to be heard at such a date as the Judges of the United States court to whom the application shall be made, as provided by statute, shall fix.

Done and ordered this 14 day of January, 1914.

WM. B. SHEPPARD, *Judge.*

Endorsed: In the District Court of the United States. The Pullman Company, a corporation, vs. W. V. Knott, as Comptroller of the State of Florida. Order. (Supplemental Bill.) Filed Jan. 14, 1914. F. W. Marsh, Clerk.

Whereupon, to-wit: on the 26th day of January, A. D.1914, there issued out of the office of the Clerk of said Court a Subpœna to the said defendant, directed to the Marshal of the said District, which was thereupon delivered to him, and was by him executed and returned into the said Clerk's office, with his return endorsed thereon, which writ, together with the said return, is in the words and figures following, to-wit:

[Endorsed:] Office Copy.

34 UNITED STATES OF AMERICA,
Northern District of Florida:

The President of the United States of America to W. V. Knott, as Comptroller of the State of Florida:

We Command You, and every of you, that you appear before the Judges of the District Court of the United States of America, for the Fifth Circuit and Northern District of Florida, at Pensacola, Fla., in said District, on the First Monday, being the 16th day of February, A. D., 1914, to answer to a bill of complaint exhibited against you by the Pullman Company, a corporation under the laws of the State of Illinois, with principal place of business at Chicago, Cook County, Illinois, and filed in the Clerk's office of said Court, and then and there to receive and abide by such judgment and decree as said Court shall have considered in this behalf. And this you are not to omit, upon pain of judgment by default being pronounced against you.

To the Marshal of the United States, to execute and return.

Witness the Honorable Wm. B. Sheppard, Judge of the *the* District Court of the United States North. Dist. of Fla., and the Seal of this Court, at the City of Pensacola, Fla., in the said District, this 26th day of January, A. D. 1914.

[SEAL.] F. W. MARSH, *Clerk.*

JOHN E. HARTRIDGE AND
G. S. FERNALD,
Solicitors for Compl't.

Memorandum.

The above named Defendant is notified that unless he shall enter his appearance and Answer in the Clerk's office of said Court, at

Pensacola, Fla., aforesaid, on or before twenty days after service hereof on him, the complaint will be taken against him as confessed and a decree entered accordingly.

[SEAL.] F. W. MARSH, *Clerk.*

35 Endorsed: Civ. 1118. No. —. District Court, United States. Northern District of Florida. Pullman Co. vs. W. V. Knott. Chancery Subpœna. Filed Feb. 4, 1914. F. W. Marsh, Clerk.

Marshal's Return.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Florida, ss:

I hereby certify and return that I served the annexed Chancery Subpœna on the therein-named W. V. Knott, as Comptroller of the State of Florida, by handing to and leaving a true and correct copy thereof with the within named W. V. Knott, personally, at Tallahassee, Fla., in said District on the 29" day of January, A. D. 1914.

JAS. B. PERKINS,
U. S. Marshal,
By W. L. STRICKLAND, *Deputy.*
J. B. P.

Filed Feb. 4, 1914. F. W. Marsh, Clerk.

And afterwards, to-wit: on the 31st day of January, A. D. 1914, was filed in the office of the Clerk of said Court a notice of hearing of the said cause, which is in the words and figures following, to-wit:

36 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY
versus
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

Supplemental Bill.

To the Honorable Park Trammell, Governor of the State of Florida; Honorable Thomas F. West, Attorney General of the State of Florida; Honorable W. V. Knott, Comptroller of the State of Florida:

You and each of you, will take notice that I will, on Monday, the ninth day of February, A. D. 1914, at eleven o'clock A. M., or as soon thereafter as I can be heard, at New Orleans, in the State of Louisiana, or at such place and at such date thereafter as may be

fixed pursuant to the United States Statute in such case made and provided, move before the Honorable Don A. Pardee, Circuit Court Judge in and for the Fifth Judicial Circuit of the United States, and such Judges as may be called in to hear same, or before such Judge or Judges as may be designated to hear same, for a temporary injunction to restrain and enjoin Honorable W. V. Knott, as Comptroller, the defendant herein, and all persons acting by or under his authority or direction from making any estimate of the amount of the gross receipts of the Pullman Company derived from business done between points in the State of Florida, either from such information as the said W. V. Knott, the defendant, may be able to obtain or upon any account or basis, and from adding to the amount claimed as a tax under any estimate ten per cent. as a penalty, and from issuing and delivering, or sending any warrant directed to any sheriff of the State of Florida, demanding him to collect by levy and sale any tax that may be claimed to be due to the State of Florida under and by virtue of Section 45 of Chapter 6421 of the Laws of Florida of 1913, and from seizing or taking into custody any
37 of the cars, or other property, of the Pullman Company thereunder, and from taking any action or proceeding to collect or to enforce payment of any sum whatsoever that the said W. V. Knott, as Comptroller, may claim to be due as a tax or penalty upon any amount or estimated amount of gross receipts under Section 45 of Chapter 6421 of the Laws of Florida, on the ground that said law is unconstitutional and void.

JOHN E. HARTRIDGE,
Attorney for the Pullman Company.

Service of a true copy of the foregoing notice received and accepted this the 17 day of January, A. D. 1914.

PARK TRAMMELL,
Governor of the State of Florida.
T. F. WEST,
Attorney General of the State of Florida.
W. V. KNOTT,
Comptroller of the State of Florida.

Endorsed: United States District Court, Northern District of Florida. The Pullman Company, vs. A. C. Croom, as Comptroller, et al. Notice of Hearing on Supplemental Bill. John E. Hartridge, Solicitor for Complainant. Filed Jan. 31, 1914, F. W. Marsh, Clerk.

And afterwards, upon the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court an Order, made by the Honorable Don A. Pardee, the Honorable David D. Shelby, and the Honorable W. I. Grubb, denying Injunction prayed for, which is in the words and figures following, to-wit:—

38 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY
versus
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

Supplemental Complaint.

This cause coming on to be heard before Honorable Don A. Pardee, Circuit Judge, in the absence of Honorable William B. Sheppard District Judge of the District, upon the application of the Complainant, upon a supplemental bill filed herein in Equity Cause No. — of the docket, for an interlocutory injunction restraining the enforcement of a State Statute upon the ground of the unconstitutionality of said Statute, and thereupon, in pursuance of the Statute in such cases made and provided, Honorable D. D. Shelby, Circuit Judge, and Honorable W. I. Grubb, District Judge, were called, and appeared to assist in the hearing and determination of said application; and it appearing to the Court thus organized that due notice of said application has been served upon Honorable Park Trammell, Governor of the State of Florida, Honorable Thomas F. West, Attorney General of the State of Florida, and Honorable W. V. Knott, Comptroller of the State of Florida; and John E. Hartridge Esq. counsel for complainant, and Honorable Thomas F. West, Attorney General State of Florida, counsel for defendant, appearing, and both parties being ready for hearing and consenting thereto, on this the 9th day of February, 1914, the application was argued and submitted for decision;—

Whereupon, upon due consideration the application for an interlocutory injunction was denied.

Witness our hands this 10th day of February, 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

39 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom as Comptroller & W. V. Knott as Treasurer. Order denying Injunction on Supplemental Bill. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court an Order allowing money to be paid into Court, which was made and caused to be entered of record by the Honorable Don A. Pardee, the Honorable

David D. Shelby and the Honorable W. I. Grubb, which Order is in the words and figures following, to-wit:—

40 In the United States District Court, Northern District of Florida. In Equity.

THE PULLMAN COMPANY, a Corporation,
versus
A. C. CROOM, as Comptroller of the State of Florida; W. V. KNOTT, as Treasurer of the State of Florida.

Supplemental Bill.

This cause coming on to be heard upon an application for an interlocutory injunction before Don A. Pardee and David D. Shelby, Circuit Judges, and W. I. Grubb, District Judge, and the said David D. Shelby, Circuit Judge and W. I. Grubb, District Judge, having been called in for the hearing as required by law, sitting in the City of New Orleans, and it appearing that due notice of said hearing and said application of more than five days had been given to the Honorable Park Trammell, Governor of the State of Florida and Thomas F. West, Attorney General of the State of Florida, and was argued upon the bill of complaint by John E. Hartridge upon the part of complainant, and by Honorable Thomas F. West, appearing for the defendant and said State of Florida, and an order having been entered denying said application for an interlocutory injunction, and the complainant having filed its petition of appeal, and praying that same operate as a supersedeas, and its assignment of error thereon, and an order having been entered, allowing said appeal and bond having been given for the cost thereon, as in such cases made and provided.

Now, therefore, it is ordered upon payment by the complainant into this Court, as tendered in the 12th paragraph of bill, within the next twenty days and in the meantime that said appeal do operate as a supersedeas and the defendants are hereby enjoined, as prayed for in the supplementary bill, pending the hearing and determination of the appeal prayed for and taken in this case to the Supreme Court of the United States, and when such determination of said case is had in said Court a further order will be made by this Court in this case.

Done and ordered this 11th day of February, 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

[Endorsed:] In the United States District Court, Northern District of Florida. In Equity. The Pullman Company vs. A. C.

Croom, as Comptroller, W. V. Knott, as Treasurer. Supplemental Bill. Order allowing money to be paid into court and sustaining W. V. Knott.

41 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Supplemental Restraining Order on the therein-named W. V. Knott, Comptroller of the State of Florida by handing to and leaving a true and correct copy thereof with the aforesaid W. V. Knott, Comptroller of the State of Florida personally at Tallahassee in said District on the 14th day of Feb., A. D. 1914.

JAS. B. PERKINS,
U. S. Marshal,
By W. L. STRICKLAND, *Deputy.*

Filed Feb. 16, 1914. F. W. Marsh, Clerk.

42 Endorsed: In the United States District Court, Northern District of Florida. In Equity. The Pullman Company vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Supplemental Bill. Order allowing Money to be paid into Court. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court the Petition for Appeal in the said cause, which is in the words and figures following, to-wit:—

43 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida, and W. V. KNOTT, as Treasurer of the State of Florida.

Supplementary Bill.

Bill for Injunction.

The Pullman Company, a corporation organized and existing under the laws of the State of Illinois, plaintiff in the above entitled cause, feeling itself aggrieved by the order or decree of this court, entered on the 11th day of February, 1914, in the above entitled cause by Circuit Court, Judges Don A. Pardee, D. D. Shelby, and District Judge, W. I. Grubb, denying, after notice and hearing as provided by the Act of Congress, as in such cases made and pro-

vided, the interlocutory injunction, does hereby pray and appeal from said order or decree to the Supreme Court of the United States, as is in and by the Act of Congress, such case made and provided, and prays that this appeal may operate as a supersedeas to the order denying said interlocutory injunction and that said appeal may be allowed and that a true copy of the record and proceedings in this case duly authenticated may be sent to the Supreme Court of the United States.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

[Endorsed:] In the District Court of the United States, Northern District of Florida. The Pullman Co. vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Petition for Appeal on Supplemental Bill. John E. Hartridge, Attorney and Solicitor for Plaintiff.

44 Endorsed: In the District Court of the United States, Northern District of Florida. The Pullman Co., vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Petition for Appeal on Supplemental Bill. Filed Feb. 12, 1914. F. W. Marsh, Clerk. John E. Hartridge, Attorney and Solicitor for Plaintiff.

And upon the said 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court the Assignment of Errors in the said Appeal, which is in the words and figures following, to-wit:

45 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida; W. V. KNOTT, as Treasurer of the State of Florida.

Now comes the plaintiff, the Pullman Company, a Corporation under the laws of the State of Illinois, by its attorney, John E. Hartridge, and says that in the record of proceedings in the above entitled cause, there is manifest error in this, to-wit:

1. The Court erred in deciding and denying an interlocutory injunction to the plaintiff as prayed in the supplemental bill of complaint.

2. The Court erred in deciding and holding that the plaintiff had no standing in equity to resist the tax levied and against which relief was sought.

3. The Court erred in holding the Act of the State of Florida complained in the bill of complaint as a constitutional enactment.

4. The Court erred in and by the order made herein denying the interlocutory injunction dated February 10th, 1914.

JOHN E. HARTRIDGE,
Attorney and Solicitor for Plaintiff.

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. J. C. Croom, as Comptroller; W. V. Knott, as Treasurer. Assignment of Errors on Supplemental Bill. John E. Hartridge, Attorney for Plaintiff.

46 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Assignment of Errors on Supplemental Bill. Filed Feb. 12, 1914, F. W. Marsh, Clerk. John E. Hartridge, Attorney for Plaintiff.

And afterwards, to-wit: on the 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court an Order made and caused to be entered of record by the Honorable Don A. Pardee, the Honorable David D. Shelby, and the Honorable W. I. Grubb, allowing the said Appeal, which order is in the words and figures following, to-wit:

47 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,

vs.

A. C. CROOM, as Comptroller of the State of Florida; W. V. KNOTT, as Treasurer of the State of Florida.

Now, on this Eleventh day of February, A. D., 1914, pursuant to the application for appeal, it is ordered that the above appeal be allowed returnable in the Supreme Court of the United States, within thirty days from this date upon the plaintiff, the Pullman Company, a Corporation organized under the laws of the State of Illinois, giving bond with surety in the sum of Two Hundred and Fifty Dollars for the payment of damages and costs, conditioned as required by law, payable to W. D. Knott, Comptroller of State of Florida.

Done and ordered at New Orleans, Louisiana, this Eleventh day of February, A. D., 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge.

Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Order Allowing Appeal in the Supplemental Bill. Filed Feb. 12, 1914, F. W. Marsh, Clerk.

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller; W. V. Knott, as Treasurer. Order Allowing Appeal in the Supplemental Bill.

And afterwards, to-wit: on the said 12th day of February, A. D. 1914, was filed in the office of the Clerk of said Court the Supersedeas Bond in the said cause, which is in the words and figures following, to wit:

48 In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,

vs.

A. C. CROOM, as Comptroller of the State of Florida; W. V. KNOTT, as Treasurer of the State of Florida.

Know all men by these presents, That we, The Pullman Company, a corporation created, existing and being under the laws of the State of Illinois, as Principal, and John E. Hartridge and H. J. Clark, as Sureties, are held and firmly bound *unto* W. V. Knott, as Comptroller of the State of Florida, in the full and just sum of Two Hundred and Fifty Dollars to be paid to the said W. V. Knott, as Comptroller, or his successors in office, to which payment, well and truly to be made, the Pullman Company binds itself, its successors and assigns and the sureties bind severally themselves, their heirs, executors and administrators.

Sealed this 11th day of February, 1914.

Whereas, lately, Circuit Judges Don A. Pardee, and D. D. Shelby, and District Judge, W. I. Grubb, did deny the application for an interlocutory injunction applied for upon the part of the Pullman Company, and the said Pullman Company has entered and obtained an order allowing an appeal to reverse the order and decree, denying an interlocutory injunction, so made by said judges, to reverse the order and decree made therein, and a citation directed to the said W. D. Knott, as Comptroller, directing and admonishing him to be and appear at a session of the Supreme Court of the United States on the 11 day of March, A. D., 1914, next.

Now, the condition of above obligation is such that if the said, The Pullman Company, shall prosecute said appeal to effect and answer all damages and costs, if it fail to make good said appeal, then the above obligation to be void, else to remain in full force and virtue.

THE PULLMAN COMPANY,
By JOHN E. HARTRIDGE, *Att'y.*
JOHN E. HARTRIDGE.
H. J. CLARK.

Bond accepted.
DON A. PARDEE,
Circuit Judge.

[Endorsed:] In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Bond in Supplemental Bill.

49 Endorsed: In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller, W. V. Knott, as Treasurer. Bond in Supplemental Bill. Filed Feb. 12, 1914. F. W. Marsh, Clerk.

50 Original.

In the United States District Court, Northern District of Florida.

THE PULLMAN COMPANY, a Corporation,
vs.
A. C. CROOM, as Comptroller of the State of Florida; W. V. KNOTT, as Treasurer of the State of Florida.

To W. V. Knott, as Comptroller, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America, to be holden in the City of Washington, District of Columbia, in the United States, wherein The Pullman Company is appellant and you, W. V. Knott, is defendant; to show cause, if any there be, why the order and decree of Circuit Judges Don A. Pardee and D. D. Shelby and District Judge, W. I. Grubb, as within the appeal mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 11th day of February, in the year of our Lord, 1914.

DON A. PARDEE,
United States Circuit Judge.

[Endorsed:] 9. Civ. 1126. In the United States District Court, Northern District of Florida. The Pullman Company vs. A. C. Croom, as Comptroller; W. V. Knott, as Treasurer. Citation in Supplemental Bill.

51 Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Nor. District of Fla., ss:

I hereby certify and return that I served the annexed Citation on the therein-named W. V. Knott, Comptroller of the State of Florida by handing to and leaving a true and correct copy thereof with W. V. Knott, Comptroller of the State of Florida, personally at Tallahassee, Fla. in said District on the 14th day of Feb. 1914, *A. D. 191–*.

JAS. B. PERKINS,
U. S. Marshal.
By W. L. STRICKLAND, *Deputy.*

Filed Feb. 16, 1914. F. W. Marsh, Clerk.

52 UNITED STATES OF AMERICA,
Northern District of Florida, ss:

I, F. W. Marsh, Clerk of the District Court of the United States for the Northern District of Florida, do hereby certify that the foregoing pages, numbered from 1 to 52, constitute and contain a true and perfect transcript of the record and proceedings of the District Court of the United States for the Northern District of Florida, in the case of the Pullman Company, a Corporation, Plaintiff and Appellant, vs. W. V. Knott, as Comptroller of the State of Florida, Defendant and Appellee, as the same remains on file and of record in said Court.

Witness my hand, and the seal of said Court, at the City of Pensacola, in said District, this the 20th day of February, A. D. 1914.

[Seal U. S. District Court, Northern District of Florida, Fifth Circuit.]

F. W. MARSH, *Clerk.*

Endorsed on cover: File No. 24,088. N. Florida D. C. U. S. Term No. 937. The Pullman Company, appellant, vs. W. V. Knott, as Comptroller of the State of Florida. Filed March 9th, 1914. File No. 24,088.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1913.

No. 383

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLEE.

MOTION TO ADVANCE.

JOHN E. HARTRIDGE,
FRANK B. KELLOGG,
GUSTAVUS S. FERNALD,
Attorneys and Counsel for Appellant.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

No. 936.

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLEE.

MOTION TO ADVANCE.

The appellant respectfully moves the court to advance this cause to be heard at as early a date as may be at the October term, 1914, together with the case of The Pullman Company, Appellant, *vs.* A. C. Croom, as Comptroller of the State of Florida, and W. V. Knott, as Treasurer of the State of Florida, Appellees, No. 937, on the calendar for the October term, 1913; the two cases to be argued as one case, in the time allowed for one case.

STATEMENT.

This case (No. 936) and No. 937 are practically identical. The question presented for the determination of this court is the same in each case; arising under the statutes of the State of Florida upon the same subject, upon substantially the same state of

facts and affect the same parties, who are represented in this court by the same counsel.

Each case brings up for review under the provisions of the Act of June 18, 1910 (36 Stat. L. 557), now embodied in Section 266 of the Judicial Code, permitting a direct appeal to the Supreme Court, an order of the District Court for the Northern District of Florida (three judges sitting as required by that act), denying the application of the appellant, The Pullman Company, for an interlocutory injunction against the appellee, W. V. Knott, as Comptroller of the State of Florida, to restrain him from proceeding to assess and collect from appellant the gross earnings taxes imposed in Case No. 937 by Section 47 of Chapter 5596 of the Laws of Florida for 1907, and in this case (No. 936) imposed for another year under the same statute, as amended by Section 45 of Chapter 6421 of the Laws of Florida for 1913.

The differences between the two cases are slight, and, as we think, unimportant. Certain it is that such differences have no bearing whatever on the question presented for the consideration of this court. The facts are these:

Section 47 of Chapter 5596, Laws of 1907, is a reenactment, in a compilation or codification of the laws of Florida, of a statute originally passed June 1, 1895. It provides that sleeping or parlor car companies operating in Florida shall report annually to the comptroller of the state the amount of their gross earnings on business done in the state, and shall pay a tax of 1½ per cent. on such gross earnings. Section 46 of the same chapter (5596)

provides for the assessment and taxation of the cars and other property of such companies on an ad valorem basis. This ad valorem tax provision was first enacted in 1907. Chapter 5597, which was also first enacted at the session of 1907, imposes a license tax of a specific sum on each car owned or operated by such companies.

Case No. 937 arises under the statute of 1907, providing for report of gross earnings and payment of a tax thereon as stated above.

This case (No. 936) arises under the statutes of 1913, amending and re-enacting certain provisions of the statute of 1907 and providing for making the same report of gross earnings, and for payment of the same tax thereon as is provided by the statute of 1907 as above recited.

Appellant insists that this gross earnings tax, under Section 47 of Chapter 5596 (in Case No. 937) and under Section 45 of Chapter 6421, laws of 1913 (in this case), is invalid under the Constitution of Florida and is in conflict with the Fourteenth Amendment to the Constitution of the United States, and that is the only real question involved in either of these cases. Acting on this theory appellant has annually paid the ad valorem property taxes and the license taxes and has sought in this action and in No. 937 to restrain the collection of the gross earnings taxes.

Case No. 937 has once before been before this court on appeal from the order denying an interlocutory injunction on the original bill filed therein. Pending that appeal A. C. Croom, who was the original appellant, as Comptroller of the State of Florida,

died, and the appellant W. V. Knott was appointed as comptroller, and on motion and stipulation Knott was substituted as appellee in this case. On final submission of the case the appeal was dismissed by this court "for want of a proper appellee to stand in judgment on the only question brought to this court." (231 U. S. 571, 577.)

Thereafter appellant filed, in the District Court, its supplemental bill in Case No. 937 against W. V. Knott, as comptroller, and at the same time filed an original bill in this case. Application for interlocutory injunction was made in each case, and the applications were argued together before Circuit Judges Pardee and Shelby and District Judge Grubb and the applications were denied. No opinion was filed with the order refusing the injunction. Appeals were immediately taken in each case by the appellant, which appeals were allowed and orders made directing the amount of taxes claimed to be due in each case to be paid into court, as offered in the bills, and that upon such payment the appeals should operate as a supersedeas until the determination of the appeal in this court. The amount of taxes claimed to be due were paid into court in each case within the time fixed by the orders, and there remains.

We respectfully submit that under these conditions it is to the interest of all concerned that the two cases be consolidated for the purposes of argument and heard as one case.

We also respectfully submit that inasmuch as these appeals involve questions of revenue claimed by the appellee to be due the State of Florida and claimed

by the appellant to be illegal and void, and as the state is deprived of receiving its revenue if legal and the appellant is being deprived of its property if the tax is illegal, that both of these cases involve questions of such public character and of such importance as to warrant this honorable court in granting this motion to advance this case to be heard as early as may be in the October term, 1914, with Case No. 937.

And we respectfully call the attention of the court to the fact that the very question involved in these appeals was first brought to this court on a simila,r appeal in March, 1911, in the case of this appellant *vs.* Croom, as comptroller, etc., decided by this court at the same time and with said Case No. 937 on said former appeal and that the parties to the causes were only deprived of a decision by this court on the merits of the question by reason of the death of A. C. Croom, the original appellee. Moreover, the threatened action sought to be restrained as illegal is threatened only by virtue of the appellee's incumbency of a political state office and should he go out of office before the questions involved in these appeals are decided, these appeals would, under the decision of this court in dismissing the former appeals (231 U. S. 571), be in the same situation as were the former appeals, and a decision on the merits of the question could not be had.

The matters and things set forth in this motion appear in the bill and the orders of the District Court, which are included in the record filed in this case and in No. 937. We are unable, however, to

refer the court to the pages of the record because, as we are advised, the record is not yet printed.

Respectfully submitted,

JOHN E. HARTRIDGE,
FRANK B. KELLOGG,
GUSTAVUS S. FERNALD,
Attorneys and Counsel for Appellant.

April 20, 1914.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1913.

No. ~~957~~ 384

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND W. V. KNOTT, AS TREASURER OF THE STATE OF FLORIDA, APPELLEES.

ON SUPPLEMENTAL BILL.

MOTION TO ADVANCE.

JOHN E. HARTRIDGE,
FRANK B. KELLOGG,
GUSTAVUS S. FERNALD,
Attorneys and Counsel for Appellant.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1913.

No. 937.

THE PULLMAN COMPANY, APPELLANT,

vs.

A. C. CROOM, AS COMPTROLLER OF THE STATE OF FLORIDA, AND W. V. KNOTT, AS TREASURER OF THE STATE OF FLORIDA, APPELLEES.

ON SUPPLEMENTAL BILL.

MOTION TO ADVANCE.

The appellant respectfully moves the court to advance this cause to be heard at as early a date as may be at the October Term, 1914, together with the case of *The Pullman Company, Appellant*, v. *W. V. Knott*, as comptroller of the State of Florida, appellee, No. 936, on the calendar for the October term, 1913; the two cases to be argued as one case, in the time allowed for one case.

STATEMENT.

This case and No. 936 are practically identical. The question presented for the determination of this court is the same in each case, arising under the statutes of the State of Florida upon the same subject, upon substantially the same state of facts and

affect the same parties, who are represented in this court by the same counsel.

Each case brings up for review under the provisions of the Act of June 18, 1910 (36 State L., 557) now embodied in Section 266 of the Judicial Code, permitting a direct appeal to the Supreme Court, an order of the District Court for the Northern District of Florida (three judges sitting as required by that Act) denying the application of the appellant, The Pullman Company, for an interlocutory injunction against the appellee, W. V. Knott, as comptroller of the State of Florida to restrain him from proceeding to assess and collect from appellant the gross earnings taxes imposed in this case by Section 47 of Chapter 5596 of the laws of Florida for 1907, and in Case No. 936, imposed for another year under the same statute, as amended by Section 45 of Chapter 6421 of the laws of Florida for 1913.

The difference between the two cases are slight, and, as we think, unimportant. Certain it is that such differences have no bearing whatever on the question presented for the consideration of this court. The facts are these:

Section 47 of Chapter 5596, Laws of 1907, is a reenactment, in a compilation or codification of the laws of Florida, of a statute originally passed June 1, 1895. It provides that sleeping or parlor car companies operating in Florida shall report annually to the comptroller of the state the amount of their gross earnings on business done in the state, and shall pay a tax of 1½ per cent. on such gross earnings. Section 46 of the same chapter (5596) provides for the assessment and taxation of the cars and other property

of such companies on an *ad valorem* basis. This *ad valorem* tax provision was first enacted in 1907. Chapter 5597, which was also first enacted at the session of 1907, imposes a license tax of a specific sum on each car owned or operated by such companies.

This case (No. 937) arises under the statute of 1907. Case No. 936 arises under the statute of 1913 as above stated, which provides for making the same report of gross earnings and for payment of the same tax thereon as is provided by the statute of 1907 as above recited.

Appellant insists that this gross earnings tax under Section 47 of Chapter 5596 in this case, and under Section 45 of Chapter 6421 laws of 1913, in Case No. 936, is invalid under the Constitution of Florida and is in conflict with the Fourteenth Amendment to the Constitution of the United States, and that is the only real question involved in either of these cases. Acting on this theory appellant has annually paid the *ad valorem* property taxes and the license taxes and has sought in this action and in No. 936 to restrain the collection of the gross earnings taxes.

This case has once before been before this court on appeal from the order denying an interlocutory injunction on the original bill filed therein. Pending that appeal, A. C. Croom, who was the original appellant as comptroller of the State of Florida, died and the appellant, W. V. Knott, was appointed as comptroller, and on motion and stipulation Knott was substituted as appellee in this case. On final submission of the case the appeal was dismissed by this

court "for want of a proper appellee to stand in judgment on the only question brought to this court." (231 U. S. 571, 577.)

Thereafter appellant filed, in the District Court, its supplemental bill in this case against W. V. Knott, as comptroller, and at the same time filed an original bill in Case No. 936. Application for interlocutory injunction was made in each case, and the applications were argued together before Circuit Judges Pardee and Shelby and District Judge Grubb, and the applications were denied. No opinion was filed with the orders refusing the injunction. Appeals were immediately taken in each case by the appellant, which appeals were allowed and orders made directing the amount of taxes claimed to be due in each case to be paid into court, as offered in the bills, and that upon such payment the appeal should operate as a supersedeas until the determination of the appeal in this court.

The amount of taxes claimed to be due was paid into court in each case within the time fixed by the orders, and there remains.

We respectfully submit that under these conditions it is to the interest of all concerned that the two cases be consolidated for the purposes of argument and heard as one case.

We also respectfully submit that inasmuch as these appeals involve questions of revenue claimed by the appellee to be due the State of Florida and claimed by the appellant to be illegal and void, and as the state is deprived of receiving its revenue, if legal, and the appellant is being deprived of its property, if the tax is illegal; that both of these cases involve questions of such

public character and of such importance as to warrant this honorable court in granting this motion to advance this case to be heard as early as may be in the October term, 1914, with Case No. 936.

And we respectfully call the attention of the court to the fact that the very question involved in these appeals was first brought to this court on a similar appeal in 1911 in the case of this appellant *vs.* Croom, as comptroller, etc., decided by this court at the same time and with this case on the former appeal, and that the parties to the causes were only deprived of a decision by this court on the merits of the question by reason of the death of A. C. Croom, the original appellee. Moreover, the threatened action sought to be restrained as illegal is threatened only by virtue of the appellee's incumbency of a political state office and should he go out of office before the questions involved in these appeals are decided, these appeals would, under the decision of this court in dismissing the former appeal in this case (231 U. S. 571), be in the same situation as was the former appeal in this case, and a decision on the merits of the question could not be had.

The matters and things set forth in this motion appear in the bill and the orders of the District Court, which are included in the record filed in this case and in No. 936. We are unable, however, to refer the court to the pages of the record, because, as we are advised, the record is not yet printed.

Respectfully submitted,

JOHN E. HARTRIDGE,
FRANK B. KELLOGG,
GUSTAVUS S. FERNALD,
Attorneys and Counsel for Appellant.

April 20, 1914.

SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 383.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

No. 384.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

Appeal from the District Court of the United States for the Northern District of Florida.

BRIEF FOR APPELLANT

FRANK B. KELLOGG,
GUSTAVUS S. FERNALD,
JOHN E. HARTRIDGE,
Attorneys and Solicitors for Appellant.

THE FRANKLIN COMPANY, ST. PAUL

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SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 936.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

No. 937.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

BRIEF OF APPELLANT.

These cases, which involve the same questions, come to this court by appeal from an order of the United States District Court for the Northern District of Florida, denying the application of the appellant for a preliminary injunction to restrain W.

V. Knott, the comptroller of the State of Florida, from enforcing by summary process a gross earnings tax upon the income of the appellant, alleged to be in violation of the Constitution of Florida and also in violation of the Constitution of the United States. The United States District Court had jurisdiction by reason of the diversity of citizenship, as well as the federal question. The appeal to this court is authorized by the act of June 18, 1910, (36 Statutes at Large 557) now embodied in Section 266 of the Judicial Code, permitting direct appeals to this court from the order of the District Court denying the appellant's application for a preliminary injunction.

I. HISTORY OF LITIGATION.

We will hereafter state fully the grounds of our objection to this tax. It is here sufficient to say that the appellant claims the gross earnings tax is not authorized by the constitution of the State of Florida, which provides for a uniform and equal rate of taxation, based upon a just valuation of all property, both real and personal, and also for a license tax, since appellant already pays its ad valorem tax upon all its property, and a license tax; that the statute is also void because it provides for the taking of property without due process of law and deprives the appellant of the equal protection of the laws, in violation of the Constitution of the United States.

The first suit in this series of litigation over the same question was brought by the appellant to enjoin the comptroller of the State of Florida from collecting the said gross earnings tax by summary process against the cars of the appellant for the years ending October 31, 1909, and October 31, 1910, amounting to $6,971.38. The United States Circuit Court refused the injunction on the ground that the tax was a license tax and on the further ground that the appellant had no standing in court to test the validity of the tax until it should have made a return and paid the tax. The comptroller thereupon levied upon the cars of the appellant, which were engaged in transporting passengers in Florida, and in order to obtain the release of the cars appellant was compelled to pay the taxes, but as there was no statute of Flor-

ida authorizing the payment of this tax and the recovery of the money, it was, of course, a voluntary payment and the appellant was without any remedy whatever.

Subsequently the appellant filed a bill in the same court to enjoin the collection of the taxes for the year ending October 31, 1911. The injunction was denied on the grounds that the tax was a graded license tax and was within the legislative power of the state. Appeals from the orders denying the injunctions in both of the cases were taken to this court. Before those appeals were reached for hearing in this court the appellant filed its bill in the District Court against the defendant Knott, as comptroller, to enjoin the collection of the gross receipts taxes for the year ending October 31, 1912, and upon the hearing the court below, upon payment of the taxes into court to await the determination of the question pending on appeal in the other cases above mentioned, enjoined the defendant from enforcing the taxes until the Supreme Court should decide the cases therein pending between the parties involving the questions involved in that case.

When the two appeals in the previous cases which we have mentioned came on for hearing in this court, they were dismissed on the ground that pending the appeal A. C. Croom had died and the court was without jurisdiction (231 U. S. 571). When the mandate was filed in the court below in the case brought to enjoin the collection of the taxes for the year ending October 31, 1911, the appellant filed its supplemental bill (Case No. 937)

in the District Court of Florida against W. V. Knott, who succeeded Croom as comptroller, to enjoin the tax for the year ending October 31, 1911, claimed to be due January 1, 1912, and at the same time filed a new bill (Case No. 936) against Knott as comptroller to enjoin the enforcement of the taxes for the year ending October 31, 1913, claimed to be due January 1, 1914.

These came on to be heard before Judges Pardee, Shelby and Grubb, who made an order denying the injunction, but without stating any grounds therefor. (Record 936, page 21, and 937, page 22.) Thereupon the appellant prayed an appeal to the Supreme Court and the court granted the appeal and made the following order in each case: (Record 936, page 22, and 937, page 23.)

> "Now, therefore, it is ordered upon payment by the complainant into this court, as tendered in the 12th paragraph of bill, within the next twenty days and in the meantime that said appeal do operate as a supersedeas and the defendants are hereby enjoined, as prayed for in the supplementary bill, pending the hearing and determination of the appeal prayed for and taken in this case to the Supreme Court of the United States, and when such determination of said case is had in said Court a further order will be made by this Court in this case."

II. STATEMENT OF THE CASE.

The Pullman Company is an Illinois Corporation engaging in the business of furnishing sleeping cars, parlor cars and dining cars to railroad companies in the State of Florida and in various other states, some of the cars being run between points wholly within the State of Florida and others from points within to points without, or vice versa. The defendant is the comptroller of the State of Florida.

GROSS EARNINGS TAX.

By Section 48 of Chapter 4115 of the Laws of Florida for 1893, it was provided that sleeping and parlor car companies should report to the state comptroller the total amount of their gross receipts derived from business done between points in the state, and should pay a tax of $1.50 upon each $100 of such receipts. In case no report should be made, the comptroller was to estimate the amount plus ten per cent. as a penalty, and proceed to collect the same as in the case of other delinquent taxes, to-wit: By issuing a warrant and levying upon the property of the delinquent. In 1895 these provisions were reenacted, and in 1907 in Section 47 of Chapter 5596 the same provisions were again reenacted in all material particulars and practically word for word. They were reenacted still again in 1913 with some slight change with respect to notice, but in all essentials the same as before, and they now constitute Section 45 of Chapter 6421 of the Laws of 1913.

This gross earnings tax was always imposed under these laws as a direct property tax, and as such paid by the appellant, and never as a license tax, either in form or in fact. Prior to 1907 this was the only tax levied upon the property of sleeping car companies in Florida.

AD VALOREM TAX.

In 1907, by Section 46 of Chapter 5596, it was provided that sleeping and parlor car companies, including the cars of the same, should be subject to an ad valorem tax the same as railroads, and it was made the duty of the comptroller and other officers to assess all the property of the companies in each county, and the value of the locomotives, engines, passenger, sleeping, parlor, freight and other cars was to be apportioned by the comptroller pro rata per mile of track, and the proportionate value assessed thereof by the counties, cities and towns through which the railroad ran, the same as the property of individuals. Under these provisions of the statute the appellant has had all its property engaged in both interstate and intrastate commerce in Florida taxed at the same rate as railroad property and all other property is taxed in that state. These taxes the appellant has paid each year.

LICENSE TAX.

In Chapter 5597 of the Laws of 1907 the Legislature imposed a so-called "license tax" upon companies engaging in the sleeping or parlor car business, and prohibited any corporation engaging in such business unless a state license should have

been procured, and also provided for the imposition of further license taxes by the counties, cities and towns. The license was $25 for sleeping and parlor cars and $40 for buffet cars. These provisions remained in force until '913, when they were amended, and now constitute Section 44 of Chapter 6421 of the Laws of 1913. The amendment provided that each company should pay to the comptroller of the state a license tax of $5,500, and no county or municipal license taxes were to be required. The appellant, as appears by the bills, has each year paid its license tax, amounting to from $4,759 to $5,500 per year, received its license to do business, and in all respects has complied with the license tax law.

From the above statement it will be seen that the State of Florida is attempting to tax sleeping and parlor car companies in three ways; (1) by a tax upon the gross receipts, which has always been imposed as a property tax; (2) by an ad valorem property tax; and (3) by a license tax. Under the constitution of Florida the appellant claims that but two kinds of taxes are permitted; a property tax imposed by equal and uniform rate and based upon a just valuation of all property, both real and personal; and a license tax; that the gross receipts tax up to the year 1907 was treated as a tax upon property in lieu of other taxes, but after the passage of the 1907 laws it constituted an additional tax upon the property and was never imposed, collected, received or treated as a license tax of any sort. It will further be noticed that section 5 of Chapter 6421 of the Laws of 1913 provides that only

one State license tax shall be required in any case, unless otherwise provided in the act. The provisions authorizing the collection of the gross earnings tax, the conditions attached to its collection, the absence of a grant of any special privilege or permission in return therefor, and the fact that the right to do business was not made dependent upon such payment, that it was not made a part of the license tax law but was inserted in the provisions for the taxation of the property for obtaining revenue, all show that the gross receipts tax has never been considered, and is not, a license tax. Therefore, it must constitute an attempt to impose an additional property tax over and above the ad valorem tax, and as such is an attempt to tax the property of the appellant twice for substantially the same period of time. Furthermore, the railroad companies of the State which in fact do business to all intents and purposes of the same nature, and, jointly with The Pullman Company, pay a license tax and an ad valorem tax, but do not pay any gross receipts tax. Therefore sleeping and parlor car companies are artificially classed by themselves and taxed together on the same basis. There is no ground for such a classification and substantial discrimination is made thereby against the appellant. The appellant is deprived of its property without due process of law, and is deprived of the equal protection of the laws.

The appellant further alleges that even if by any possible line of reasoning the gross receipts tax could be construed as a license tax, yet as the same is not based on a just and reasonable classification,

it will be invalid. Furthermore, in case the report required could not or should not be made, there is no provision in the law of 1907 (sec. 47, chap. 5596) for any notice whatever giving opportunity for a hearing as to the correctness of the estimate made or to be made by the comptroller, and no opportunity given for a hearing on the amount of taxes imposed by such estimate, nor any limit placed upon the arbitrary judgment of the estimate of the comptroller, and the result is that appellant is deprived of its property without due process of law. The law of 1913, sec. 45, chap. 6421, is not different, and is no better in this particular. It merely provides that the comptroller shall make the estimate after having given at least five days notice to the appellant, but makes no provision whatever for any hearing or for any method of questioning the arbitrary estimate made by the comptroller "from such information as he may be able to obtain."

Under the Florida law there is no method by which the taxes may be paid under protest and an action to recover the same instituted at a later period of time. Therefore the appellant has no remedy at law.

In case the rolling stock or equipment of the appellant were seized on a warrant on a claim for taxes, interstate commerce would be seriously interfered with and the appellant damaged thereby.

III. ARGUMENT.

(1) Constitutional Provisions.

Section 1 of Article 9 of the Constitution of the State of Florida provides for the imposition of an ad valorem tax upon property as follows:

> "The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

Section 5 of Article 9, after providing for county, city and township taxation, provides for the imposition of a capitation and license tax.

> "* * * The Legislature may also provide for levying a special capitation tax and a tax on licenses * * *."
>
> (Balance of the section relates to capitation tax.)

Section 16, Article 16, of the Constitution provides as follows:

> "The property of all corporations * * * shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes."

This section, it will be observed, does not enlarge the taxing power of the Legislature with respect to corporations.

If the Constitution of Florida had simply provided that property (not exempted) should be taxed, it might be held that the Legislature had the power to classify property and describe *how* it

should be taxed—some by ad valorem, some by specific tax, and some upon receipts or revenue derived from the use of the property, but the language of Sections 1 and 5 of Article 9 of the Constitution above quoted, specifying certain taxes which the Legislature may provide, restricts the authority of the Legislature.

Cheney v. Jones, 14 Fla. 587, 612, 613.

With respect to the constitutional limitation upon this authority, the Supreme Court of Florida said in this case:

> "Were there no prescriptions in the Constitution of the several objects or purposes for which the Legislature may impose taxes, there would be no limitation upon the power except in the wisdom and discretion of the Legislature. And it is not necessary that a limitation of power should be framed in express terms. If a power is granted to do certain things, as for instance, the levying of taxes for certain specified and enumerated purposes, and it is not *essential* to the carrying out of the purposes of the government that any such power should be exercised except for the purposes specified, *the effect of such prescriptions is equally prohibitory as to the purposes not specified as though the prohibition were declared in affirmative terms.*"

(Pg. 612. The last italics are ours.)

And on page 613 the court also said of the Constitution:

> "It prescribes what may be done, how far the Legislature may go in levying taxes; and upon the principles alluded to, it is a limitation not wanting in directness to amount to a prohibition."

The Legislature *must* provide under Section 1 for a uniform and equal rate of taxation, based upon a just *valuation of property;* and under Section 5 it *may* provide for a special capitation tax and a tax on licenses, and may provide *for those only.* L. Afro-American Industrial, etc., Ass'n, v. State, 61 Fla. 85, 89; 54 Sou. 383, in which the Supreme Court of Florida said:

> "The defendant contends that, under the provisions of sections 1 and 5 of article 9 of the state constitution, only two classes of taxes can be levied in this state, an *ad valorem* tax and a tax on licenses. The correctness of this contention may be conceded."

It is clear then that only these forms of taxes can be levied in Florida: an ad valorem tax, a capitation tax, and a tax on licenses. The constitutional provisions relating to these taxes are a limitation upon the authority of the legislature to provide for any other form.

(2) Claims of the Appellant.

Under the laws of Florida, the property of sleeping and parlor car companies is subjected to three forms of taxation, and no other companies or corporations doing business in the state are likewise assessed.

First. They pay an ad valorem tax based upon the assessed value of their property, which tax, under the constitution, must be by a "uniform and equal rate of taxation throughout the state."

Second. They pay a license tax for engaging in the sleeping and parlor car business.

Third. In addition to this they are required to file a statement of their gross earnings within the state, and the comptroller is required to assess 1½ per cent of these gross earnings and collect it by summary process.

It is to enjoin the comptroller and treasurer from issuing a process and collecting this last enumerated tax that the two suits were brought.

The claims of the appellant are:

1. That this is not a capitation or license tax provided for by Section 5, Article IX of the Florida constitution.

2. That it is not an ad valorem tax based upon a "just valuation of all property" and provided for by a "uniform and equal rate of taxation" throughout the state, under Section 1, Article IX of the Florida constitution.

3. That the statute and the imposition of the tax thereunder deprives the appellant of its property without due process of law and denies to appellant the equal protection of the laws, in violation of the

Fourteenth Amendment to the Constitution of the United States.

4. That the case presented is within the cognizance of the equity jurisdiction of the federal court.

(3) This is not a Capitation Tax or a License Tax Provided for by Section 5 of Article IX of the Florida Constitution.

Of course, no argument is necessary to show that this is not a capitation tax. The court below held it to be a license tax. We believe we can demonstrate that in this the court below was in error.

If the gross receipts tax on sleeping car companies can be held to be a license tax, the intention of the legislature to impose it as such must be plain, since it is not so designated in the Act itself.

This tax was the *only tax* provided for sleeping and parlor car companies in the law of 1895 and until the law of 1907. Prior to the latter year the gross receipts tax could not have been held to be a license tax, graded or otherwise, because neither sleeping car companies nor sleeping car business was mentioned in the license provisions of the statute. The sleeping car business was open and free to any person without a license and without payment of a license tax, and was not made in any way dependent upon the payment of a gross receipts tax.

In enacting the two chapters in 1907 referred to (5596 and 5597) the legislature provided an entirely new method of taxation of sleeping car companies and their property (chapter 5596, sec. 46) and for the first time made provision for a license tax on the business of sleeping car companies (Schedule B, sec. 8, chap. 5597). This provision for license tax *contains no reference to the gross receipts or gross receipts tax.* It prohibited the doing of sleeping car business unless the license tax

specifically provided for therein was paid, but the provison for the gross receipts tax was not changed from what it had previously been under former statutes.

The doing of such business was no more made dependent upon payment of the gross receipts tax by the 1907 statute than it was prior to the enactment of that statute, and the tax could no more be a license tax taken in connection with the provisions of the license tax chapter, as the district court held, than it could have been a license tax before those provisions were enacted. It might be noted, however, that a gross receipts license tax for *insurance* companies was provided for in the *license tax act* along with the specific license tax.

Afro-American Industrial, etc., Ass'n, v. State, 61 Fla. 85; 54 So. 383.

There is nothing in the tax assessment law relating to the license tax, and nothing in the license law relating to anything except licenses and license taxes. These provisions and separation of the subjects by the legislature bear upon the *character of the tax* imposed by Section 47, Chapter 5596, Laws of 1907 (the gross receipts tax) and upon the intention of the legislature in enacting it; that the legislature considered its power to tax licenses fully exercised when it enacted the license tax provision for sleeping car companies in Chapter 5597 without any reference to the gross receipts tax provided in the tax assessment chapter. It is apparent from those provisions and the history of the Florida legislation surrounding this subject that there was no intention on the part of the legislature to make

the tax computed on gross receipts a license tax, and this is so persuasive as to be practically conclusive that the legislature did not so intend, but that the contrary appears. In the absence of anything indicating that the legislature did intend to connect the two acts they should not be construed together.

In City of Burlington v. Putnam Ins. Co., 31 Ia. 102, 105, the Court said regarding the two acts:

> "The two acts do not relate to the same subject. The provision of the charter relates to the licensing of the insurance companies and grants the power as a power of the police authority of the city. The section of the Act cited as repealing this provision relates to the taxation of insurance companies. These acts, therefore, cannot be in conflict, and by no rule of construction can the last act be held to repeal by implication the authority conferred in the charter to license insurance companies."

The gross receipts tax here involved was not provided for as a license tax, and the provisions with respect to its imposition have none of the essentials of a license tax. No business or occupation was specified for which the tax was required as a condition of obtaining the license; no one on behalf of the state was authorized to collect it as a license tax, and *the first claim that it was a license tax was made in the court below in these cases.* There was no provision of law under which any official of the state of Florida could issue a license in consideration of the payment of the gross receipts tax, and none was ever issued upon payment of this identical tax under former statutes nor under the

1907 statute, Section 47, for the years for which it has been collected; no provision making the right to conduct or continue to conduct the sleeping car business in any way depend on the report to be made at the end of the year and the payment of the gross receipts tax; no permission was granted thereby, and no officer could issue any license or privilege under this law. It is a direct burden on the property of the company; its imposition depends on no condition whatever.

Pickard v. Pullman, 117 U. S. 34;
Royall v. Virginia, 116 U. S. 572;
Afro-American Industrial, etc., Ass'n v. State, 61 Fla. 85; 54 So. 383;
State ex rel Wyatt v. Ashbrook, 154 Mo. 375;
City of Brookfield v. Tooey, 141 Mo. 619;
Youngblood v. Sexton, 32 Mich. 406;
Pennsylvania v. Standard Oil Co. 101 Penn. St., 119;
State v. Canda Cattle Car Co., 85 Minn. 457.

In 1913 the Legislature enacted Chapter 6421, being "An Act imposing licenses and other taxes, providing for the payment thereof, and prescribing penalties for doing business without a license, or other failure to comply with the provisions thereof."

In this Act it is provided:

By Section 1, that no person, firm or corporation shall engage in or manage any business, profession or occupation named in this Act unless a license has been procured either from the Tax Collector of the county or from the Comptroller or State Treasurer as provided by the Act.

Section 4 provides that all licenses shall be pay-

able on or before the first day of October of each year.

Section 5 provides that only one state license shall be required in any case, unless otherwise provided in this Act, and that all state license taxes shall be paid to the Tax Collector or to the Comptroller or to the State Treasurer as provided by the Act.

Section 44 reads as follows:

"Sleeping and Parlor Car Companies; License."

"Sec. 44. Sleeping and Parlor Car Companies operating any such cars on or over any railroads or any part of said railroads in this state, shall on the first day of October of each year, pay to the comptroller a license tax of five thousand five hundred dollars ($5,500.00) which shall be paid into the State Treasury by the Comptroller to the credit of the General Revenue Fund. Provided, that, no other county or municipal license taxes shall be required of any such company under this section

"No County or Municipal License Required.

"The Superintendent of any Sleeping and Parlor Car Company violating the provisions of this Act, and any person who acts as Agent for any such company before it has paid the above license tax payable by said company shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished respectively by a fine of not more than five hundred ($500.00) dollars, or by imprisonment in the county jail not more than six (6) months, or by both such fine and imprisonment, in the discretion of the court."

"Penalties.

It will be observed that the license taxes upon sleeping and parlor car companies was changed from a license tax upon each car to a license tax of

a gross sum ($5,500.00) payable on the first day of October in each year.

"Sleeping and Parlor Car Companies to Make Report and Pay on Gross Receipts.

Section 45 of this Act is as follows:

> "Sec. 45. All Sleeping and Parlor Car Companies operating their cars in this State shall, on or before the first day of January, 1914, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the Secretary or other officer of such company, the total amount of their gross receipts derived from business done between points in this State, and at the same time shall pay into the State Treasury the sum of one dollar and fifty cents ($1.50) upon each one hundred ($100.00) dollars of such gross receipts, and if any such company shall fail to make such report to the Comptroller and pay the tax thereon as herein provided, the Comptroller, shall *after having given at least five days notice to an official or representative of the company located in this State*, estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent. to the amount of such taxes as a penalty for the failure of such company to make report, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected; *provided, that no penalty shall be added if a return is made and the amount due paid to the State Treasurer before the expiration of the time stated in the notice required to be given by this Section.*"

"Penalty for failure to make report and pay percentage tax, after notice has been given by Comptroller.

"Proviso.

In the above quotation we have underlined the words and figures which have been added by this Act to the provisions of the corresponding section of the former Acts referred to, and with those ex-

ceptions the provisions requiring the payment of a tax upon the gross receipts of sleeping car companies is precisely the same as before.

The very nature of a license tax makes it absolutely requisite that the statute imposing it should definitely indicate and provide for what the tax is to be paid; that is, what privilege is to be secured to the payer that he would not otherwise have; what he shall be permitted to do, which, without the payment, would not be permitted.

Bradley v. City of Richmond, 227 U. S. 477;
Chicago v. Collins, 175 Ill. 445, 457;
Banta v. Chicago, 172 Ill. 204, 219;
Ellis v. Frazier, 38 Ore. 462;
St. Paul v. Traeger, 25 Minn. 248;
Cooley on Taxation, 3d Ed. 1098, 1138.

In the City of Chicago v. Collins, 175 Ill. 445, 457, the supreme court of Illinois, quoting from Cooley on Taxation, said:

> "If what is to be done under the license is open to every one without it the grant would be merely idle and nugatory, conferring no privilege whatever."

In Royall v. Virginia, 116 U. S. 572, 579, this court said of a license and license tax:

> "The payment required as a preliminary to the license is in the nature and form of a tax and is a due to the state which it may demand and exact from every one of its citizens who either will or must follow some business avocation within its limits to the pursuit of which the assessment is made a condition precedent."

The supreme court of Michigan, in Youngblood v. Sexton, 32 Mich. 406, 419, said:

> "The object of a license is to confer a right that does not exist without a license. * * * Within this definition a mere tax on the traffic cannot be a license of the traffic unless the tax confers some right to carry on the traffic which otherwise would not have existed."

It seems to us that the learned district court must have misunderstood the situation which we have attempted to set up and which seems to us to have such an important bearing upon the character of the sleeping car gross receipts tax, or have treated that exaction as the *equivalent* of a license tax.

The legislature of Florida had power to impose a license tax, and likewise power to impose a property tax on such companies, but that furnishes no reason for calling its attempt to tax the gross receipts on property purely for revenue, a license tax and by judicial construction to connect it with the license taxes, which were separately provided for. With respect to the principle involved in that theory, this Court said in Home Savings Bank v. Des Moines, 205 U. S. 503, 519, with respect to taxing shares of a bank and its equivalent effect upon the shareholders:

> "It is said that where a tax is levied upon a corporation measured by the value of the shares in it, it is equivalent in its effect to a tax (clearly valid) upon the shareholders in respect to their shares, because being paid by the bank, the burden falls eventually upon the shareholders in proportion to their holdings. It was upon this view that the lower court rested its opinion, but the two kinds of taxes are not equivalent in law, because the state has

> the power to levy one and has not the power to levy the other. The question here is one of power and not one of economics. If the state has not the power to levy this tax we will not inquire whether another tax which it might lawfully impose would have the same ultimate incidence. Precisely the same argument was made and rejected in Owensboro National Bank v. Owensboro, 173 U. S. 664."

In the Owensboro case, 173 U. S. 664, the court said, on page 683:

> "The argument that public policy exacts that where there is inequality in amount between an unlawful tax and a lawful one the unlawful tax should be held valid, does not strike us as worthy of serious consideration."

It is true that the doctrine that legislation should be upheld if possible is far reaching in its effect, but we submit that the courts may not by judicial construction give to legislation an effect not intended simply because the legislature had not the power to do what it evidently *did intend* but had the power to do something else and hence hold the something else to be what was done. We do not think the doctrine goes so far.

In addition to the evidence in the statutes bearing upon the intention of the legislature with respect to the gross receipts tax, the construction placed upon it by the officers of the state of Florida charged with the administration of the law is of moment and is a matter of which the Court can take judicial notice.

United States v. Gilmore, 8 Wallace 330;
Union Ins. Co. v. Hoge, 21 Howard 35-66;
United States v. Pugh, 99 U. S. 265;
Westbrook v. Miller, 56 Mich. 148;

Bloxham Comptroller v. Consumers Electric Etc. Co. 36 Fla. 519.

We wish to make it perfectly plain to the court that these gross receipts taxes imposed under former statutes have been assessed all of the years since 1893 and until the years involved herein were paid as property taxes. They were never paid as license taxes and prior to the enactment of Chapter 5597, Laws of 1907, the engaging in sleeping and parlor car business in Florida had not been made a taxable privilege for which a license or license tax was required, but such business was open to anyone to transact without condition, hence the gross receipts tax could not have been a license tax prior to the statutes of 1907. True it was not a tax by valuation except as value may be measured by income (United States Ex. Co. v. Minnesota, 223 U. S. 335, McHenry v. Alford, 168 U. S. 651) and was unconstitutional under Section 1, Article 9 of the Florida Constitution, but it was nevertheless provided for, assessed and collected by the state; paid by the appellant for years; its constitutionality as a property tax was not questioned by either; and the state collected and retained the money and never was it either paid or accepted as a license tax of any sort. The gross receipts tax imposed under the law of 1907 and re-enacted in Section 45 of Chapter 6421, Laws of 1913, is not different in its character in any particular than the same tax imposed by statute prior to the Act of 1907 and has not been differtntly treated by the state authorities. It was not until the enactment of Chapter 5597, Laws of 1907, that the conduct of the sleeping car business was made a taxable privilege for which a

license tax was required. And Section 8, Chapter 5597, Laws of 1907, and Section 44, Chapter 6421, Laws of 1913, respectively, provided an entirely separate, specific and complete license tax to be paid by the sleeping and parlor car companies for the privilege and license with no reference whatever to the gross receipts tax.

We believe that the court below fell into error in the case of Afro-American Industrial, etc., Ass'n v. Florida, 61 Fla. 85, 54. So. 383. The legislature passed an act (Chap. 5459, Laws of 1905) to define and regulate sick and benefit insurance, and therein provided a specific license tax for all companies engaged in that business. In enacting the general license tax law of 1907 (Chap. 5597) specific license taxes were provided for the insurance companies *there* defined (but not including sick and funeral benefit insurance companies), and in addition thereto two per cent of the gross amount of receipts of premiums from policyholders of the companies *there* defined, *and also from companies doing business under Chapter* 5459, *Acts of* 1905. What the court sustained was the percentage license tax on sick and benefit insurance companies the same as on other insurance companies. The provisions of the two statutes were so connected by specific language in the 1907 law with respect to sick and funeral benefit companies that the court could not hold otherwise than that they should be construed together. The taxes upheld against the insurance company *were provided for as license taxes by the statute.* If the legislature in enacting the sleeping and parlor car license tax provisions

in Section 8 of Chapter 5597 had provided for the specific license tax "and in addition thereto a tax of one and one-half per cent. upon their gross receipts" we admit that the Afro-American case would be authority that the gross receipts tax was imposed as a license tax, but that was not done. All the elements and reasons for holding the insurance percentage tax to be a license tax are entirely lacking with respect to the tax involved in the case at bar. The former tax contained every element of a license tax; it was imposed as a condition of transacting the business of insurance within the state; the language of the act and every provision as to the issuance of a license indicate that it was a privilege tax pure and simple. We quote the provision of the statute which imposed this license tax as follows:

> "That each insurance company or association, firm or individual doing business in this state * * * shall pay to the state treasurer a license tax of $200 * * * and in additon thereto each of said companies shall upon the 1st day of January after the passage of this act and on the 1st day of each succeeding January thereafter pay to the state treasurer two per cent of the gross amount of receipts of premiums from policyholders in this state. Companies or associations doing business under Chapter 5459, Laws of Florida, Acts of 1905, shall pay to the state treasurer two per cent of the gross amount of receipts from policyholders in this state; * * * That each insurance company shall pay to the state treasurer for each traveling agent or solicitor doing business in this state a license tax of $25."

In the case at bar the law was Section 47 of Chap. 5596, of the General Revenue Laws of 1907, imposing direct taxes on real and personal property in the state, including sleeping and parlor cars. There is not a word in the entire statute to indicate that this was imposed as a license or privilege tax, and, as we have seen, it contains none of the elements thereof.

In order that the Court may have before it clearly the language of the two acts, we print a more extended statement of these two statutes as an appendix to this brief.

The tax now in question has, as we have already said, never been treated, either by the legislature or by the state officials, as a license tax. It was imposed unconditionally as a direct burden upon the property of the corporation.

It will be noticed that the reasons assigned by the supreme court of Florida for holding the gross earnings tax a license tax in the Afro-American Industrial, etc., Ass'n case was the language of the act imposing it, the fact that it was imposed with a license tax of $100 and as a condition of issuing the license. The court laid particular stress upon the language of the act. The Court said:

> "It will be observed that the legislature intended the tax in question as a license tax, and so treated it. It will further be observed that in the paragraph so copied above a license tax of $200 is imposed upon certain specific insurance companies, a license tax of $50 upon plate glass insurance companies, and that 'in addition thereto each of said companies shall' pay annually 'two per cent of the gross amount of receipts from policyholders in this state.'

> which like amount is required of companies doing business under Chapter 5459, Acts of 1905, to which class the defendant belongs."

It was required as a condition to issuing the license to do business. Such is not the case with the gross earnings tax on sleeping and parlor car companies. It is not called a license tax, and the gross earnings tax is imposed without any condition whatever, and it is not connected with the license tax provision.

See also Ry. Co. v. State, 49 Ohio St. 189, 199.

We do not, of course, claim that the validity or invalidity of a tax depends upon its location in the statute, or that a tax if valid is made invalid either by misnomer or improper location in the statute. But, on the other hand, an invalid and illegal tax cannot be made valid, either by the legislature or the courts, by merely giving it the name of a legal and valid tax. That an illegal tax may not be made legal by name or form has been held by this court so many times and so emphatically that we take it the last word on that point has been spoken.

Galveston, etc., Ry. v. Texas, 210 U. S. 217, 227;
Postal Tel. Co. v. Taylor, 192 U. S. 64, 73;
Ry. Co. v. State, 49 Ohio St. 189;
Crenshaw v. Ark., 33 Sup. Ct. 294, 298.

Let us briefly examine other authorities upon the question. The case of City of Brookfield v. Tooey, 141 Mo. 692, 43 S. W. 387, is practically on all fours with the case at bar. This was an action against the defendant for failure to comply with the terms of an ordinance imposing a tax of one per cent per annum upon the cash value of goods, wares and

merchandise on hand as shown by a sworn statement, as and for a license tax. The Court said:

> "Counsel rightly concludes that the vital and exceedingly important question presented in this record is the validity of a license tax of one per cent per annum upon the cash value of the goods, wares and merchandise owned by the defendant as a merchant in said city. It will be observed that the defendant has paid all of his taxes, state, county and city, up to the constitutional limit, and that no question arises in regard to an election to increase the power of taxation. In a word, can this tax of one per cent upon the cash value of the goods on hand be upheld as an occupation or privilege tax. After a careful investigation of the questions mooted and most ably discussed by counsel, it seems palpable that this is a 'property tax' pure and simple. It is an obvious misnomer to call it 'a tax upon occupation.' Whilst cities of the third class may exact a license tax upon occupations or calling, the tax thus enacted must be upon the privilege itself and not a plain ad valorem tax upon property as this ordinance does. We are fully convinced that this tax cannot be held to be otherwise than a direct tax upon property. It is therefore in direct disobedience of Sections 3 and 11 of Article X of the constitution of Missouri, because it is not uniform upon all the personal property in said city, but levies one dollar upon every one hundred dollars of assessable personal property belonging to a merchant and exempts all personal property not belonging to a merchant from said tax, and because having already taxed and collected of the merchants of said city fifty cents on a one-hundred-dollar valuation for said year,

this additional ad valorem tax of one per cent on the same property is in excess of the constitutional limit, and therefore void. Whether the city can divide the merchants of the city into as many classes as their assessments differ in amounts, and denominate each merchant a separate class according to his valuation, and enact for each a different license tax, as this ordinance evidently proposes, we deem unnecessary to discuss at this time. It is sufficient to say the present tax is so plainly a property tax and an effort to avoid the constitution that it is illegal and void."

This case is further strengthened by the holding of the supreme court in the case of State ex rel Wyatt v. Ashbrook, 154 Mo. 375. The court held that a tax on department stores imposed as a license tax lacked every element of a license tax, was a revenue measure, and was unconstitutional.

In the case of State v. Canda Cattle Car Co., 85 Minn. 457, the statute authorized the imposition of a two per cent tax upon the value of the property of cattle car companies assessed in the following manner: A law was passed requiring the companies to file a statement showing the number of shares of capital stock, the par and market value thereof, the value of real estate owned by them, the length of railways over which their cars are run, the length of such lines within and without the state, and the whole number and value of their cars. The state board of equalization was to fix the assessable value of the property from this information, and to levy two per cent thereon. Other property throughout the state is assessed a varying percentage sufficient to meet the amount of taxes

raised. The Constitution of Minnesota provided "that all taxes to be raised shall be as nearly equal as may be, and all property upon which the same are levied shall have a cash valuation and be equal and uniform throughout the state." The court held the law unconstitutional. It was imposed by the legislature "in the nature of an excise tax or license," but the court thought it was not such a tax, that it was a direct burden upon the property, and as such lacked uniformity with other taxes and was void. The court said:

> "The language of this act is that the state board of equalization shall impose a tax 'in the nature of an excise tax or license,' but a reading of the whole act shows beyond any doubt that it was not the intention of the legislature that the tax should be a license fee imposed as a condition to the right of such corporations to do business in this state."

In the case of Ellis v. Frazier, 38 Ore. 462, 63 Pac., 642, certain counties imposed a tax of $1.25 upon bicycles, and provided that the same should be used for keeping up the highways in the district. In considering whether this was a tax or a license, the Supreme Court said:

> "As a preliminary matter it is important to consider whether the burden thus imposed upon bicycle owners is a tax or a license; for, if the latter, it is not inhibited by the provisions of the organic act relied upon, the courts generally holding that the constitutional requirement as to uniformity of taxation has no reference to the taxation of occupations. Ex parte City Council of Montgomery, 64 Ala. 463; Ex parte Mirande, 73 Cal. 365, 14 Pac. 888; Baker v. City of Cincinnati, 11 Ohio St.

534. The legislative assembly has referred to the levy as a tax, but the descriptive designation is unimportant; for the object sought to be attained by the enactment must determine the character of the exaction. Ex parte Gregory, 54 Am. Rep. 516. 'The distinction between a demand of money under the police power, and one made under the power to tax,' says Judge Cooley, 'is not so much one of form as of substance. The proceedings may be the same in the two cases, though the purpose is essentially different. The one is made for regulation, and the other for revenue. If, therefore, the purpose is evident in any particular instance, there can be no difficulty in classifying the case, and referring it to the proper power.' Cooley, Tax'n, 396. It was held, in the case of In re Wan Yin (D. C.) 22 Fed. 701, that whenever it is manifest that the fee for a license to conduct an occupation is substantially in excess of the sum necessary to cover the cost of issuing the license and the incidental expenses attending the regulation of the business, the burden is a tax, and not a license. So, too, in City of St. Paul v. Traeger, 25 Minn. 248, the common council of St. Paul having passed an ordinance requiring a license fee of $25.00 from every peddler of vegetables in the streets of the city, and no regulation or restraint having been imposed upon the manner of conducting the business, it was held that the exaction, being so much in excess of the reasonable expense of issuing the license, was a tax levied upon the business for revenue. 'It is therefore conclusive,' says Mr. Tiedeman, in his work on State and Federal Control of Persons and Property (volume 1, p. 495), in commenting upon the distinction between a tax and a license, 'that the general require-

ment of a license, for the pursuit of any business that is not dangerous to the public, can only be justified as an exercise of the power of taxation, or the requirement of a compensation for the enjoyment of a privilege or franchise.'" (Page 643.)

In the case of Youngblood v. Sexton, 32 Mich. 408, Cooley, J., in defining the nature of a license tax, said:

"The popular understanding of the word license undoubtedly is a permission to do something which without the license would not be allowable. This we are to suppose was the sense in which it was made use of in the constitution. But this is also the legal meaning. 'The object of a license,' says Mr. Justice Manning, 'is to confer a right that does not exist without a license.' Chilvers v. People, 11 Mich. 43, 49. Within this definition, a mere tax upon the traffic cannot be a license of the traffic, unless the tax confers some right to carry on the traffic which otherwise would not have existed. We do not understand that such is the case here. The very act which imposed this tax repealed the previous law, which forbade the traffic and declared it illegal. The trade then became lawful, whether taxed or not; and this law, in imposing the tax, did not declare the trade illegal in case the tax was not paid. So far as we can perceive, a failure to pay the tax no more renders the trade illegal than would a like failure of a farmer to pay the tax on his farm render its cultivation illegal. The state has imposed the tax in each case, and made such provision as has been deemed needful to insure its payment; but it has not seen fit to make the failure to pay a forfeiture of the right to pursue the calling.

> If the tax is paid, the traffic is lawful; but if it is not paid, the traffic is equally lawful. There is consequently nothing in the case that appears to be in the nature of a license. The state has provided for the taxation of a business which was found in existence, and the carrying on of which it no longer prohibits; and that is all." (Pgs. 419-420.)

In the case of Pennsylvania v. Standard Oil Co., 101 Pa. St. 119, a tax of a certain per cent was laid on the income or property of certain corporations; that is, a rate of tax upon the dividend made and declared by such companies, and if no dividend was made or declared, then three mills upon a valuation of the capital stock. It was claimed that this tax came within the definition of a license tax because it was imposed on corporations doing business within the state. The Supreme Court held to the contrary. Mr. Justice Paxson, writing the opinion, said:

> "A license tax is evidently intended as a compensation to the state for the protection which it affords foreign corporations who have an office within its borders for the convenience of its officers, but upon whose property it could impose no tax because not within its jurisdiction. The tax in this case is in no sense a license tax. The state never granted a license to the Standard Oil Company to do business here. It merely taxes its property, that is, its capital stock, to the extent that it brings such propery within its borders in the transaction of its business." (Pgs. 145-146.)

Pingree v. Auditor General, 120 Mich. 95, 78 N. W. 1025.

Under the Constitution of Michigan the legisla-

ture was required to provide a uniform rule of taxation except on property paying "specific taxes." A tax was levied by the legislature on telephone and telegraph lines at a certain rate per cent upon the value of the property within the state. It was claimed that this was a privilege or license tax. The questions were whether, first, the taxes were ad valorem or specific; second, if not specific, were they valid? The court said with respect to the intention as disclosed by the statute itself:

> "If the tax in this case is clearly an ad valorem tax, if it is a tax on property—and this cannot be questioned, because the title and the act both call it a tax on telegraph lines, which are property,—there is nothing in the law to indicate that an occupation tax or tax upon business was intended, even were we to hold that its ad valorem feature would not necessarily preclude its being denominated a specific tax."

In the case of Pullman Southern Car Co. v. Nolan, 22 Fed. 277, Mr. Justice Matthews, writing the opinion of the court at circuit, held that the tax imposed in that case, $75 a car, for the privilege of running sleeping cars within the state, was a license tax. The language of the court in defining the same is important. The court said:

> "A reference to repeated decisions of the Supreme Court of Tennessee leaves no room to doubt what constitutes a 'privilege' as a subject of taxation under the constitution and laws of that state. 'The first legislature after the formation of the constitution' said that court in French v. Baker, 4 Sneed 193, acted upon the idea that every occupation which was not open to every citizen but could

> only be exercised by a license from some constituted authority, was a privilege, and it is presumed that this is a correct definition of the term.' In Mayor of Columbia v. Guest, 3 Head 414, the keeping of a livery stable was held not to be a privilege because the legislature had not so declared. 'A privilege,' said the court in Jenkins v. Ewin, 8 Heisk 456, 'is the exercise of an occupation or business which requires a license from some proper authority designated by some general law and not free to all or any without such license.' 'There is a clear distinction recognized,' says the Supreme Court of Georgia in Home Insurance Co. v. Augusta, 50 Ga. 530, 'between a license granted or acquired as a condition precedent before a certain thing can be done and a tax assessed on the business which that license may authorize one to engage in. A license is a right granted by some competent authority to do an act which without such authority would be illegal. A tax is a rate or sum of money assessed upon the personal property, business or occupation of the citizen.' "

There is no substantial difference between a privilege tax and a license tax. The words "license" and "license tax" are often used somewhat loosely in the statutes, but it would not be claimed that a license tax is imposed only to cover the bare license issued to the licensee. The license tax is imposed as the consideration to be paid for the right or privilege to do the thing licensed.

In the case of City of Burlington v. The Putnam Insurance Co., 31 Ia., 103, the validity of a 1 per cent tax upon the premiums of insurance companies was involved. The law of this state authorized a city council "to levy and collect taxes on all real

and personal property in said city not exempt by the general law from taxation"; and also "to grant or refuse licenses to insurance companies."

It provided for issuing a license and collecting therefor such a sum as the council should from time to time declare. By a subsequent resolution the city council imposed a charge or tax of 1 per cent on the premiums of all insurance companies in addition to the license imposed. The court held that the latter was not a license tax and not a tax on real and personal property, and was therefore in violation of the law of the state. The court said:

> "It cannot be fairly claimed that the one per centum is a charge for license. The resolution authorizing the collection of that sum expressly distinguishes the two. It in terms requires the payment of the one per centum, and then declares that there shall be collected 'in addition thereto the following sums for licenses,' specifying the amounts to be paid. The one per centum is clearly not required to be paid for or on account of the license. It is, then, an assessment in the nature of a tax. Is the city authorized to levy it? It may levy and collect taxes upon the real and personal property in the city, and this is the extent of its taxing power. It is a well settled rule that taxes can be levied and collected by municipal corporations only, as the power is conferred upon them by the legislature; from that source they derive authority to levy taxes, and it must be exercised in the manner prescribed in their charters. The power conferred in this instance is to levy and collect taxes upon real and personal property." (Page 104.)

In the case of Home Insurance Co. of New York

v. City Council of Augusta, Georgia, 50 Ga. 530, it appears that the Home Insurance Co. was authorized to do business in the state under the Insurance Act. The City Council of Augusta passed an ordinance to assess and levy taxes for the support of the municipal government and purported to make it an annual license tax of $100.00 on one class of insurance companies, and $250.00 on another. The court held that it was not a license. The discussion of the case is particularly applicable to the question at bar. The court said:

> "There is a clear distinction recognized between a license granted or required as a condition precedent before a certain thing can be done, and a tax assessed on the business which that license may authorize one to engage in; 42 Georgia, 596. A license is a right granted by some competent authority to do an act which, without such license, would be illegal. A tax is a rate or sum of money assessed on the person property, etc., of the citizen; Bouv. L. D.; 36 Georgia 460. A license is issued under the police power of the authority which grants it. If the fee required for the license is intended for revenue, its exaction is an exercise of the power of taxation; Cooley's Const. Lim. 201. The tax assessed upon complainant by the City Council of Augusta by the ordinance of January 5th, 1874, although called a 'license tax,' is more properly a tax than a license fee, or a fee exacted in order to secure the right to engage in a business which, without paying for and obtaining such authority, would be illegal. The title of the ordinance is 'An ordinance to amend an ordinance to assess and levy taxes for the support of the municipal government of Augusta,' etc. The

amended ordinance has these further words in its title, 'and for the payment of the interest on the funded debt of said city.' It is true, this last mentioned ordinance, which is so amended, refers to the 'subjects and rates of taxation and license'; but by referring to the ordinance of December 28th, 1872, entitled 'An ordinance to fix the annual and specific taxes of the city of Augusta,' etc., and which was continued in force by said amended ordinance, it will be seen that there was a special tax of $100.00 assessed upon such companies as that of complainants. This is the first ordinance, so far as the record shows, assessing such a tax. In that ordinance, both in the title and the enacting clause it is called a tax. In the second and third sections, it may be that a license is provided for in the cases of two classes of business, and in those sections they are denominated licenses; but the assessment made by it on insurance companies is clearly a tax." (Pages 537-8.)

In the case of the Attorney General v. Winnebago Lake & Fox River Plank Road Co., 11 Wis., 35, the legislature levied a tax of 1 per cent upon the gross earnings of the company. It was held that it was not a license tax. On this question the court said:

"The only other position taken was that this should be regarded as a sum paid for a license. But we are wholly unable to see how this can be maintained. It does not purport to be a license, it is not classed among licenses, various kinds of which are provided for in the statutes. It does not perform the functions of a license. A license is an authority granted to do that which the licensee might not legally do without it." (P. 44.)

There are two other cases which should be called

to the attention of the court, the Galveston, Harrisburg, etc., Ry. Co. v. Texas, decided in the Civil Court of Appeals, 93 S. W. Rep. pg. 436, and in this court on a writ of error to the Supreme Court of Texas. It is unnecessary to state the facts in this case, as the decision is familiar to everyone. Suffice it to say that the tax was upon the gross earnings of a Texas railroad in addition to an ad valorem tax. The Court of Civil Appeals in a very carefully considered opinion too long to quote in this brief, on pages 444 to 448, held that this was a tax on property and not an occupation tax, that this holding was principally based upon the nature of the tax and the construction of the various statutes imposing it. The court said (p. 445):

> "If the tax is upon the gross receipts it is upon property, and it could not in such a case, be used as a mere measurement to ascertain the amount of the occupation tax."

This holding of the court of Civil Appeals was reversed by the Supreme Court of Texas, 97 Southwestern Reporter 71, and a writ of error being taken to the Supreme Court of the United States, this court reversed the Supreme Court of Texas and held the law unconstitutional, saying:

> "This is merely an effort to reach the gross receipts, not even disguised by the name of an occupation tax." (210 U. S. 228.)

In the case of Parker, Tax Collector v. North British & M. Ins. Co., 42 La. Ann. 428, 7 So. 599, the legislature imposed a gross earnings tax upon the receipts of certain insurance companies. Under the constitution of Louisiana only two kinds of taxes could be levied, property taxes and license

taxes, and the question was whether this was a license tax. The court said:

> "The tax is resisted on the ground that it is without warrant under the constitution and laws of the state. The constitution contemplates only two kinds of taxes, viz: property taxes and license taxes. We are not prepared or required to say whether such a tax, if imposed, in proper terms, as a license tax, would be valid. It is not, and does not purport to be, a license tax. A license tax is not covered or contemplated by either the title or the body of the act. The very proceeding taken by the state is one provided exclusively for the collection of property taxes; and under the terms of the pleadings, as well as under the assessment itself, it is claimed and denominated as a tax on property.
>
> Then the question, simply stated, is whether a property tax levied on the gross receipts of a limited and particular class of persons, and not levied upon the gross receipts of any other class, is valid. The plain constitutional mandate that 'all property shall be taxed in proportion to its value' would seem peremptorily to settle this question. If gross receipts be property subject to taxation, the gross receipts of all or of none must be taxed. It is vain to call gross receipts 'capital.' They are not capital or capital stock, and no legislative declaration can make them so. The only class of taxes under which this can possibly fall is that of an income tax." (Page 600.)

In the case of State v. Express Co., 60 N. H. pg. 233 of the opinion, the court held a gross earnings tax upon express companies not to be a license tax. The court said:

> "This case requires us to decide upon the

constitutionality of c. 63, Gen. Laws. Whether under any circumstances, the statute in question could be regarded as an exercise of the police power, we need not inquire. It is obvious it was not so intended or understood, either by the tax commissioners who reported it, or the legislature by which it was enacted, or the commissioners under whose direction it was incorporated with the statutes in the volume of the General Laws. The report of the tax commissioners affords abundant evidence of their understanding that it was a statute solely for raising revenue. They speak of taxes to be raised from 'express companies' as a new source of revenue, as one of the subjects of taxation. Report of Tax Com., 23, 24, 25. The title of the bill, as reported by them, was 'An act to tax express corporations, companies, or persons carrying on express business in this state'; and the bill itself, as enacted, is identical with that reported by the commissioners, with the exception that, as enacted, there was an additional section providing for the collection of the tax, and 'license' was substituted for 'tax' wherever that word occurred in the bill as reported, as though the name by which the imposition was called would determine its nature. In the General Laws it is placed under the general title 'Of taxation,' and the title of this particular act is 'Taxation or the licensing of express companies and express men.' The word 'license' may have been substituted under the impression that, as an act imposing a tax, it could not be defended; and other reasons, not now necessary to be mentioned, may have led to the change;—but whatever may have been the object, and without considering the title of the act, either as reported or passed, or its par-

> ticular title and location in the General Laws, in the light of all the surrounding circumstances, and having in mind the provisions of the act, the character of the business upon which it was designed to operate, and the nature, application, and extent of the police power, it can be considered in no other light than that of a statute the object of which is to raise revenue by taxation, and the question before us must be determined on this view of its scope and object." (Pages 233-234.)

Pickard v. Pullman, 117 U. S. 34. The tax involved in this case was not only a specific tax, but it is defined in the statute to be a privilege tax. The activities for which the tax was assessed were themselves defined by statute to be privileges, and by the reference to the decision of the state court referred to in the last paragraph of the opinion of this court, it would seem that the state court without holding it definitely to be a tax, had sustained it upon the view that the property of a foreign corporation could be taxed as property or by an excise upon its use.

But the Supreme Court of the United States held that the tax being imposed as a privilege or license tax could not be sustained by the state court simply calling it a tax on property. 117 U. S. 51.

Johnson v. Armour, 31 Fla. 413. The tax upheld in this case was provided for as a specific license tax, and it is immaterial whether the court called it a license tax or an occupation tax, especially in view of the later holding of the same court in the Afro-American case, 61 Fla. 85.

We think it may safely be said that all of the license or privilege or occupation taxes which have

been sustained by any of the state courts, state or federal, have been imposed under statutes which either defined them specifically as license, privilege or occupation taxes, or contained such provisions as made it clear that it was the legislative *intention* to provide for a license, privilege or occupation tax; that the statutes imposing the taxes contained something affirmative to indicate that such was the intention of the legislature, and that the intention did not rest upon the entirely negative evidence that the imposition was not valid as any other kind of a tax.

The court should not apply to this gross earnings law a forced or unnatural construction in order to sustain it as a license tax, for the Supreme Court of Florida has held, in line with the decisions of other courts, that where a license tax has been once imposed, such a construction will not be given to the law as will impose another license tax for the same privilege, if any other construction is permissible.

Ex parte Simms, 40 Florida 440;
City of Newport vs. Fitzer, 131 Kentucky 544, (115 S. W. 742.)

The Supreme Court of Florida decided in the Simms Case (40 Fla. 440) that the sale of spirituous, vinous or malt liquors is one licensed privilege, and that the right to deal in those articles "constitutes but a single taxable privilege," and that every presumption was against a construction which would authorize a city to impose another license tax, for this would be double taxation, and

in Canover v. Williams, 41 Fla. 509, the same court in referring to the Simms case said:

> "The rule stated in the Simms case is not confined to dealers in spirituous, vinous and malt liquors, but applies to each and every privilege taxed by the state."

The same rule as that in the Simms case was laid down in the City of Newport v. Fitzer, 131 Ky. 544, (115 S. W. 742), in which the court said:

> **"Whatever power the Legislature may have had to levy a double tax, the presumption always is against such intent. A statute will not be so construed as to embrace double taxation, unless the construction is required by its express words or necessary implication. The safe and sound rule of construction of levying laws is to hold, in the absence of express words plainly disclosing a different intent, that they were not intended to subject the same property to be twice charged for the same tax, nor the same business to be twice taxed for the exercise of the same privilege."**

It seems to be perfectly plain that under the provisions of Section 8 of Chapter 5597 of the Laws of 1907, and of Section 44, Chapter 6421, Laws of 1913, the engaging in the sleeping car business and the transaction of such business with the necessary facilities therefor is and was, as held in the Simms case (40 Fla. 432, 440), *a single taxable privilege* obtainable on payment of the license tax there specified; no condition was attached thereto that those engaged in that business should pay a further license or a further tax in connection with the license and in such circumstances a holding that the gross receipts tax is also a license tax is to impose two license taxes for the privilege of doing the

thing, that is, conducting the sleeping and parlor car business. The gross receipts tax is nowhere made a part of the price for the *single taxable privilege.*

The Afro-American Insurance case, 61 Florida 85 (54 Southern 383) is a case where the express language of the statute was so plain that no other construction was possible, while in the case at bar the express language of the statute to impose an ordinary revenue tax is so plain that it seems impossible for the court to hold this to be a license tax.

(4) THIS IS NOT AN AD VALOREM TAX BASED UPON A "JUST VALUATION OF ALL PROPERTY" AND PROVIDED FOR BY "A UNIFORM AND EQUAL RATE OF TAXATION" THROUGHOUT THE STATE.

Little argument is necessary to demonstrate this proposition, for the tax cannot be sustained as a property tax because of the provisions of Section 1, Article 9 of the Constitution of Florida. There can under it be but one kind of property tax, an ad valorem tax. The bill in both cases alleges that there is levied on the property of the Pullman Company an ad valorem tax the same as on railroads and other property, and that such taxes are levied upon the full assessed valuation of said property "at the regular rates and percentages of taxes levied upon other property within the state and in the various counties respectively in which said taxes were paid." (Record, No. 936, p. 5. No. 937, p. 6.)

The tax in question is not an ad valorem tax, for, of course, the rate of 1½ per cent on gross earnings is not equal and uniform with the rate throughout the state levied on the ad valorem basis. Again, under this provision of the constitution it is not based upon a just valuation of all property, both real and personal. Under the authorities such a tax is in violation of the provision of the Florida constitution.

Afro-American Industrial & Benefit Ass'n of the United States of America v. State, 61 Fla. 85, 54 So. 383;

Pickard v. Pullman, 117 U. S. 34;

Ry. Co. v. State, 49 O. St. 189;

State v. Canda Cattle Car Co., 85 Minn. 457;

Rice County v. Citizens' Nat'l Bank, 23 Minn. 280;

State v. Duluth & Iron Range R. R. Co., 77 Minn. 433;

Drew v. Tift, 79 Minn. 175;

City of Brookfield v. Tooey, 141 Mo. 619;

State v. Cumberland, etc., R. R., 40 Md. 22.

As we understand it, no claim was made in the court below that the tax in question was authorized by the provision of the constitution for levying ad valorem taxes. In fact, as we saw when we considered the question of a tax on licenses the court has held that a 2 per cent gross earnings tax on a certain specified class of insurance was not levied in accordance with the foregoing constitutional provision. The court said in Afro American Ins. etc. Assn. v. State, 61 Fla. 85, 54 So. 383.

> "The defendant contends that, under the provisions of sections 1 and 5 of article 9 of the state Constitution, only two classes of taxes can be levied in this state, an ad valorem tax and a tax on licenses. The correctness of this contention may be conceded. We might concede the correctness of the further contention of the defendant that 'in laying an ad valorem tax, a valuation of the property of each person or corporation liable to be taxed is an absolute necessity. In no other way can the amount to be paid by each taxpayer be ascertained. A valid assessment is therefore indispensable.' See 27 Amer. & Eng. Ency. of Law (2d Ed.) 660, cited by the defendant. But, conceding this, we fail to see its applicability to the instant case, since the tax in quesis not an ad valorem tax. In so holding we again find ourselves in full accord with the defendant." Page 384.)

In the case of Railway Co. v. State, 49 Oh. St. 189, the legislature provided for a tax or specific "fee" of one dollar per mile for each mile of railroad track operated within the state in addition to the property taxed by valuation. The constitution of the state of Ohio at that time provided:

> "Laws shall be passed taxing by a uniform rule all moneys, credits, investments * * * and also all real and personal property according to its true value in money."

The Supreme Court held that this tax was void, and said:

> "If this exaction from railroad companies, imposed according to trackage, is a tax, within the meaning of the constitution, then it falls within the inhibition of both of those sections of our constitution. Within the inhibition of section 11, because the railway property, including tracks, within the state, is taxed by the general taxing laws of the state, at its true value in money, and the tracks of a railroad, being a part of its property, is subjected to a burden not imposed 'according to its true value in money'; and within the inhibition of section 5, because it fails to state the object for which the tax is levied." (Page 198.)

The court further said:

> "The sum exacted is an arbitrary one, having no apparent connection with any benefits conferred by the act itself, or that to which it is supplementary, and the law fails to attempt in any manner whatever to provide a method by which any relation between the benefits and burdens that it confers or imposes can be ascertained; but simply provides for the payment of a fixed sum which is to be applied

solely to swell the general revenue of the state." (Page 199.)

In the case of Pickard v. Pullman, 117 U. S. 34, a tax of $50.00 per annum was imposed on every sleeping car coach used or run over a railroad in Tennessee and not owned by the railroad. Section 28 of Article 2 of the Constitution of Tennessee of 1870, contains these provisions:

> "All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the state."

The Supreme Court, by Mr. Justice Blatchford, said:

> "The tax was not a property tax because under the constitution of Tennessee all property must be taxed according to its value, and this tax was not measured by value, but was an arbitrary charge." (Pages 43 and 44.)

The tax in that case, however, was specifically laid as a privilege tax.

State v. Canda Cattle Car Co. 85 Minn. 458.

The Constitution of Minnesota provides:

> "That all taxes to be raised shall be as nearly equal as may be, and all property upon which the same are levied shall have a cash valuation and be equal and uniform throughout the state."

A law was passed taxing the property of cattle car companies in the manner heretofore stated in this brief. (See page ...) The court held the law unconstitutional, and among other things said:

> "The act under consideration fixes a uniform rate of two per cent upon the valuation of the property of corporations coming within

its operation, while the general rate of taxation upon other property in the state is fixed and determined by the amount of taxes necessary to be raised for the purpose of defraying the public expenses. It may be one, two, three, or four per cent. The contention of defendant is that the rate so fixed by the act is in violation of the equality provision of our constitution and consequently void. We think, for reasons already stated, defendant's position must be sustained. City of Brookfield v. Tooey, 141 Mo. 619, 43 S. W. 387; State v. Lakeside Land Co. 71 Minn. 283, 73 N. W. 970; State v. Cumberland, etc., R. R. 40 Md. 22." (Page 462.)

In the case of State v. Lakeside Land Co. 71 Minn. 283, the court held that a commuted system of taxation providing for a tax of 1 cent a ton on all ore mined in lieu of the ad valorem tax, to be in violation of this provision of the constitution. The court said:

"It would be difficult to conceive of a system of taxation more obnoxious to the constitution."

The same court held a tax on gross earnings in violation of this provision of the constitution in the cases of Rice County v. Citizens' Nat'l Bank, 23 Minn. 280, and State v. Duluth & Iron Range R. R. Co., 77 Minn. 433. In the latter case the court said:

"Under the provisions of our constitution requiring uniformity of taxation and requiring all property except certain specified exemptions, to be assessed for taxation according to its true value in money, the legislature had no power to pass a gross earnings law except as permitted by said constitutional amendment of 1871."

Subsequently the Minnesota constitution was amended so as to allow a gross earnings tax. State v. United States Express Co. 114 Minn. 348. The Supreme Court of Minnesota and this court held that this was a property tax; that is, fairly representative of the property within the state. But the constitution of Minnesota does not now contain the provision as to uniformity or cash valuation contained in the constitution of the state of Florida; nor was the property of the express company otherwise taxed, and, conceding it to be a property tax, still, there is no pretense that it was levied on the cash valuation or that it was under a uniform rate.

In the case of City of Brookfield v. Tooey, 141 Mo. 619, the ordinance of the city imposed a tax of 1 per cent per annum upon the cash value of goods. The court held it to be in violation of Sections 3 and 11, of Article 10 of the constitution of Missouri, because not uniform upon all personal property in the city.

In the case of State v. The Cumberland etc. R. R. Co., 40 Md. 22, a tax of 2 cents per gross ton was imposed on all coal mined and shipped to any place in the state. The constitution provided as follows:

> "Every person in the state or person holding property therein ought to contribute his proportion of public taxes for the support of government according to his actual worth in real or personal property."

The court held that this tax violated the uniformity and cash valuation provision of the constitution.

After stating that the capital stock of the mining company was subject to taxation, and as the stock

was representative of the property, the payment of the tax on the capital exempted the property, the court said:

> "And although the State may elect to tax either the capital stock, or the real and personal property of the company yet it cannot tax both; and if it elect to tax the real and personal property, and not the stock, such property must be assessed according to the same equal and uniform rate, in proportion to its value, as all other property in the State, whether owned by individuals or corporations. It is not competent to the Legislature to discriminate as between the different species of property, and to tax some by one rule and some by another. All must bear the burden alike; for if it were otherwise, it would be impossible to observe the rule, which requires that every person in the State, or person holding property therein, shall contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property."

As we have seen, the Supreme Court of Florida has held that only three forms of taxes can be levied: the ad valorem tax, the capitation tax, and the tax on licenses; and that the constitutional provision which provides for this is a limitation upon the authority of the legislature to provide any other.

Cheney v. Jones, 14 Fla. 587;

Afro-American Ins. Co. v. State, 61 Fla. 85.

That the tax in question is not an ad valorem tax seems too clear to require further argument.

(5) THE STATUTE AND IMPOSITION OF THE TAX THEREUNDER DEPRIVES THE APPELLANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIES TO APPELLANT THE EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

If not a license tax, the gross receipts tax must fall, because not permitted under the Constitution of Florida as construed by the highest court of that land. As a property tax it is not valid.

The statutes of Florida provide for the taxation of property by ad valorem, but not for a separate and additional tax on the earnings from the property and business, *except with respect to sleeping car companies.*

As we have stated, the Florida Constitution does not provide for the classification of property for taxation either by kind, ownership or use, the only two classes mentioned being taxable property and property exempted from taxation.

The classification mentioned in Hayes vs. Walker, 54 Fla. 163, 172, is not plainly defined, but in any event it could not permit taxation other than by ad valorem, and the Afro-American case, 61 Fla. 85, may be considered as decisive of the law that no property tax other than an ad valorem one is permitted by the Constitution.

We have shown that the gross receipts tax in question is not a license tax and that though a property tax, it is not assesed on an ad valorem basis, hence it is invalid.

In any event, Sec. 47 of Chap. 5596 is but an attempt on the part of the legislature of Florida to

impose on the sleeping car companies and their property a tax and a burden not imposed on others or on other property, either through oversight in leaving that provision in the statute after adopting the ad valorem tax for sleeping car property or with the intention to produce discrimination and inequality of taxation. But one property tax can be collected. (Galveston, etc. Ry. vs. Texas, 210 U. S. 217; Meyer vs. Wells-Fargo, 223 U. S. 298; Minn. vs. Union Depot Co., 42 Minn. 142.)

Whether oversight or intention, such an exaction is a taxing of property without due process of law and is to deprive the person taxed of the equal protection of the laws. Santa Clara County vs. So. Pac. Ry., 18 Fed. 385, 399.

We recognize that unequal taxes alone growing out of overvaluation or by classification, does not ordinarily amount to a deprivation of property without due process of law, or at any rate that the question in such a case is not open in this court if the state court shall have sustained the tax, but where the statute itself proceeds upon a wrong principle making an arbitrary exaction which, being unauthorized, is virtually no more than a forced contribution, then, within the rule of this court as we understand it, the court will form its own judgment as to the scope and purpose of a statute and will for itself examine and determine whether there is a deprivation of property without due process of law, as well as whether there is a denial of the equal protection of the laws.

Morgan v. Louisiana, 118 U. S. 455, 462.
Collins v. New Hampshire, 171 U. S. 30, 34.

Atchison, etc. Ry. v. Matthews, 174 U. S. 96, 100, 101.

Western Turf Ass'n. v. Greenberg, 204 U. S. 359, 362.

Galveston, etc. Ry. v. Texas, 210 U. S. 217.

It was the wrong principle involved that condemned the tax imposed in Fargo v. Hart, 193 U. S. 490. This court there said it was not a question of overvaluation, but a difference in principle; and in Raymond v. Chicago Traction (207 U. S., 20, 38), it was a difference in the method of assessing property of the same kind.

On principle it cannot be different in the resulting burden on the taxpayer whether his property is *once* assessed and taxed by a wrong method which discriminates against him by increasing his taxes over those of other taxpayers, or whether his property is *twice* taxed, once by valuation and *again* upon the earnings it produces, and his tax thereby increased over other taxpayers, whose property is taxed but once. He is equally discriminated against and denied the equal protection of the laws in either case.

An exaction made without reference to a common ratio and without valuation, as required by the Constitution of Florida, is not a tax. This is not a question of overvaluation, but the imposition of a tax by legislative act which provides for its assessment and for summary proceedings for its collection, not giving the taxpayer a hearing either judicially or otherwise. It is based upon a fundamentally wrong principle under the Florida Constitution and the statute imposing the tax is an arbitrary exercise of power and virtually provides for a

forced contribution. Such arbitrary exactions not only deny the equal protection of the laws but amount to a taking of property without due process of law.

Duluth & I. R. R. Co. v. St. Louis County, 179 U. S., 302, 305.

Also concurring opinion of Mr. Justice White, with whom concurred Mr. Justice Harlan, Mr. Justice Gray and Mr. Justice McKenna, in Stearns v. Minnesota, 179 U. S. 223, 262.

Bradley v. City of Richmond, 227 U. S. 477.

The equal protection of the laws is denied to appellant because by Sections 46 and 47 of Chapter 5596 Laws of 1907 and sec. 45 of chap. 6421, Laws of 1913, both its property and the earnings thereof are taxed.

Galveston, etc. Ry. v. Texas, 210 U. S. 228.
Meyer v. Wells, Fargo, 223, U. S. 301.

Equal protection is denied because the laws of Florida impose an ad valorem tax upon the appellant's property, a license tax, and an additional tax computed on its earnings from the property taxed, imposed on no other property in the State.

Sec. 46, Chap. 5596, provides for the taxation of railroad property and sleeping car property. Both classes of companies are required to return their sleeping and parlor cars for taxation, both are required to pay ad valorem taxes thereon and also specific license taxes under the separate license laws of the state, but the statutes of Florida do not provide for taxing the gross receipts from sleeping or parlor car business done by the railroad com-

panies and *only* the sleeping car companies are required, *in addition* to the ad valorem and specific license tax, to return their gross receipts from their business for taxation and submit to a tax on both the property and its earnings. Such a discrimination cannot be sustained under the power of classification. This court has repeatedly so held.

Southern Ry. v. Greene, 216 U. S. 400.

Gulf C. and S. F. Ry. v. Ellis, 165 U. S. 150, 155, 165.

In the latter case it was said, page 165:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

There is no real and substantial distinction, in fact no distinction whatever except the ownership of the cars, between sleeping car business done in the cars of a railroad company and that done in the cars of a sleeping car company and the tax provided on sleeping or parlor car companies is mere arbitrary selection.

The force of what this court said in the two cases just cited is in no way weakened by Aluminum Company v. Arkansas, 222 U. S. 251, or Bradley v. Richmond, 227 U. S. 477.

In fact in the latter case all that this court had previously said regarding the reasonableness of a classification was upheld.

The court said on page 481:

> "An ordinance which commits to a board, committee or single official the power to make an *arbitrary* classification for purposes of taxation would meet neither the requirement of due process nor that of the equal protection of the law.
>
> (Italics the court's.)
>
> "But this ordinance does not authorize any arbitrary classification, *nor could the state* or the council legally confer or exercise arbitrary power in classifying for the purpose of either regulating, or licensing, or taxing. The guarantee of the Fourteenth Amendment would forbid.
>
> (Italics ours.)
>
> "But whether the power of classifying be exercised by the state directly or by a city council authorized to require the payment of such a tax as a condition to the issuance of the license, it is at last the exercise of legislature discretion and is subject, in either case, to the guarantee referred to."

The same doctrine has been fully recognized by the Supreme Court of Florida with respect to classification.

> Seaboard Air Line Ry. v. Simon, 56 Fla. 545.
>
> Harper v. Galloway, 58 Fla. 255.

In the Seaboard Air Line case the court said the only question presented for determination was whether a statute authorizing an allowance of 25 per cent. per annum on the principal sum of a claim for goods lost while being transported by a railroad company, but not in the case of any other common carrier, was valid.

> "The guaranty of due process of law afford-

ed by the constitution forbids the arbitrary exercise of governmental power by the legislature. An unreasonable classification of persons or corporations for the purposes of a legislative regulation that will be burdensome to those included in the class regulated, leaving others who are similarly conditioned with reference to the *subject regulated* free from the regulation and burden, may be an arbitrary exercise of governmental power. * * * The subject regulated is not peculiar to railroads, but is equally and similarly applicable to all common carriers of goods, whether the service is rendered by the use of railroads, boats or other means. If this statute is enforced and two entirely similar shipments are made at the same time between the same points, one by means of a railroad and the other by means of a steamboat, and both shipments are lost in transit, the shipper may, under the circumstances stated in the Act, recover from the operators of the railroads 25 per cent. per annum in addition to the value of the goods lost by it; while, under exactly similar circumstances only the value of the goods may be recovered from the operators of the steamboat. This is clearly an unjust discrimination against those operating the railroad, since there is apparently no real difference between the two common carriers with reference to the subject regulated, which is the payment of goods lost in transportation by a common carrier."

The court further on said:

"The subject of regulation is this case is not the operation of railroads, but it is the payment of goods lost in transportation by a particular kind of common carrier."

The court held the special classification in the

statute violated the guaranties of due process of law and the due protection of the laws.

Let us paraphrase slightly the simile of the Florida court above quoted and say in the case at bar:

> "If this statute is enforced and two persons occupy accommodations in sleeping cars between points in Florida, one in a sleeping car owned by the railroad on which it runs and the other in the car of a sleeping or parlor car company running on another railroad, each company making a separate charge for the sleeping or parlor car accommodations, in addition to the transportation fare; the sleeping or parlor car company must pay to the state one and a half per cent. of what it receives from its patron for the accommodations, but the railroad company is not subjected to that burden upon its earnings from precisely the same business; each company pays ad valorem taxes on the car which is used and each company pays the specified license tax provided by another statute for conducting its business. This is clearly an unjust discrimination against the owner of the sleeping car which does not own a railroad, since there is no real difference between the two common carriers with reference to the *subject* on which the tax is imposed, viz., the earnings from sleeping and parlor car accommodations."

Almost the exact case arose in Texas where a statute imposing a tax on owners of sleeping cars for running them over the railway of another but exempting the act of running the same kind of cars over the road of the owners of the cars, was held unconstitutional.

> Pullman Palace Car Co. v. State, 64 Texas 274.

In the Texas case just cited the exemption was provided in the act; in the case at bar *the same exemption was accomplished* by expressly providing the tax for the sleeping car companies and failing to provide it for the railway companies.

As we have seen, Chapter 5596, Laws of Florida 1907, containing Section 47, imposing the gross earnings tax, is entitled "AN ACT RELATING TO TAX ASSESSMENTS AND COLLECTION OF REVENUE." The object of every provision of the act is for the levying of direct taxes and the collection of the same as revenue for the state. The particular section simply requires a report of the gross revenue within the state, requires the comptroller to estimate the same if it is not reported, and in such a case to add 10 per cent as a penalty for failure to report, and to proceed to collect the tax together with all costs and penalties, the same as other delinquent taxes are collected. Its position in the statutes, and its language, plainly indicate that it is the imposition of a direct revenue tax. The object in passing it was clearly to raise revenue. It has been a part of the general taxation revenue law for years. It has been paid by the company because during that time the company was not subject to an ad valorem tax in addition to the gross earnings tax. In 1907 the legislature provided for the taxation of its property the same as railroads, to-wit: on a cash valuation under the uniform rate applied to all other property, so that it now pays a tax on all its property, and a license tax for running each car in the state. It is a rank discrimination as between it and railroads running

their own sleeping and parlor cars (as some railroads in Florida do), as well as a discrimination against it in favor of other property. It is a clear violation of the constitution and should not be sustained.

Even though we should adopt the view of the lower court and consider that the tax was in fact a license tax, yet the imposition of it in the instant case is not valid, for, if sustained, the appellant is denied the equal protection of the laws.

It is true that license taxes, when imposed, are imposed by the state rather in the exercise of its police power than in the exercise of a taxing power itself. It is also true that the constitutional requirement as to the uniformity of taxation does not apply with the same strictness to license taxes as to other taxes.

Ex parte City Council of Montgomery, 64 Alabama 463;

Ex parte Mirande, 73 California 365, 14 Pacific 888;

Baker v. City of Cincinnati, 11 Ohio State 534.

But, nevertheless, license taxes may not be arbitrarily imposed with entire disregard of the rights of citizens affected thereby to the equal protection of the laws. License taxes must be based upon some valid classification; not arbitrary legislative caprice alone. It is true that legislatures may carry the process of subdivison into classes to a very great length, but the rule that all members of the same class must be treated alike in tax laws is inflexible. The court, therefore, must always decide the question as to whether a discriminating tax law discriminates between classes or between mem-

bers of the same class. If the former, it is constitutional; if the latter, it is not.

These principles are so firmly grounded in our law and so universally upheld by the courts that it would not be profitable to multiply citations. The Supreme Court of Florida in Seaboard Air Line Railway v. Simon, 47 So. 1003, said:

> "Where persons or corporations engaged in the same character of business under practically the same legal duties and obligations are subjected to different restrictions or burdens with reference to the duties and obligations of such business, and there are no legal or natural, practical, and reasonable differences of a material or substantial nature in the duties owed by them in the subject regulated, which justify a difference in regulations of the duties and obligations with reference to the business engaged in by all, the different restrictions or burdens imposed on some and not on all similarly conditioned may operate as a deprivation of property without due process of law and as a denial of the equal protection of the laws."

In Ferguson v. McDonald, 63 So. 915, 66 Fla. 494, the court said, on page 917:

> "There is no express limitation upon the power of the Legislature to provide for levying a tax on licenses, whether it be levied directly by and for the state, or through a municipality for its purposes; but such power should not be so exercised as to deprive any person of property without due process of law, or so as to deny to any person the equal protection of the laws."

In Afro-American Industrial and Benefit Ass'n v. State, 61 Fla. 85, 54 So. 383), the court laid down the same rule.

See also:

State v. Atlantic Coast Line Ry., 54 So. 393;
Hardee v. Brown, 47 So. 834 (Florida).

The doctrine with respect to licenses and license taxes is also fully recognized by the Supreme Court of Florida in Harper v. Galloway, 58 Florida 255, where it was said with respect to the classification of persons in obtaining licenses to hunt game and payment of special taxes therefor:

> "Classifications of persons may be made in connection with the regulation, but such regulations should have some just relation to the real differences with respect to the subject regulated, and should not be unjustly discriminatory or merely arbitrary. If this rule is not observed, classifications of persons in connection with the regulation of the hunting of game may deny to some residents of the state the equal protection of the laws."

In the recent case of VanDeman and Lewis Co. v. Rast, 214 Fed. 827, the United States District Court had under consideration Sec. 35 of Chapter 6421 of the Laws of Florida for 1913, which imposed a license tax upon merchants offering coupons or profit sharing or premium features with any merchandise sold. This section is another part of the same license law under which the appellant's cars are now taxed. In holding the tax unconstitutional upon the ground that it did not rest upon any valid basis of classification and violated the equality clause of the Fourteenth Amendment, the court said:

> "Is there a just basis for the classification attempted in this section of the act? Merchants, etc., all pay a tax according to the

value of the stock carried by each, but, if they sell goods for which coupons, etc., are given by themselves or others, then they must pay this additional tax for each place of business in each and every county in which said business is conducted or carried on. And, if goods are offered for sale with which coupons are given redeemable by persons other than the seller, then this tax must be paid by him for each of said lines of goods. We can see no just basis for this classification. It is an arbitrary selection of one merchant for the imposition of a 'greater burden' than that imposed on others in the same calling and condition.

The classification in the instant case is clearly unjust and discriminatory. Railroads running their own sleeping and parlor cars (as certain railroads in Florida do) are not required to pay the tax, but the appellant is. Both the railroads operating their own sleeping and parlor cars and the appellant have paid an ad valorem tax upon their property. There is practically no difference in the situation of either as regards ownership and operation of such property, and yet the appellant is required by the statute in question to pay a further tax upon the gross receipts derived from their operation.

The case of Pullman Palace Car Co. v. State, 64 Texas 274, 53 Am. Rep. 758, is most apposite. In that case the court held that the law taxing owners of sleeping cars running them over the railway of another, but exempting the same kind of cars from taxation when run over the roads of the owners of the cars was unconstitutional. That, in effect, is the law before us today.

> "If the things done constitute in one person or corporation the taxed occupation, no one doing the same things can be omitted from the class taxed, without a violation of the constitutional provision; even though the omitted or excepted person or corporation may do more or other things than are necessary to constitute the taxed occupation, and though that done in excess may, within itself, constitute a distinct occupation subject to taxation, however kindred in nature the occupations may be."

See

New Orleans v. Mutual Home Ins. Co., 23 La. Annual 449;

New Orleans v. Louisiana Savings Bank & Deposit Co., 31 La. Annual 637;

City of St. Louis v. Spiegel, 75 Mo. 145.

In Alabama Consolidated Coal & Iron Co. v. Herzberg, 59 So. 305, the Supreme Court of Alabama in holding a tax upon storekeepers conducting stores at which employes traded on checks or orders unconstitutional, said:

> "The tax is not, therefore, imposed upon the business or upon all engaged in a similar business, but is based solely upon the manner in which a party may conduct the business, and the foregoing section is repugnant to the state and federal constitutions."

In Siciliano v. Neptune Township, 83 Atlantic 865 (N. J.), the court held a municipal ordinance invalid which imposed license fees of $100 upon express wagons or motor vehicles used in delivering express matter, while only a $12 fee was exacted for like vehicles used in the business of delivering goods not in the express business. The court said:

> "The legislative warrant for imposing

> license fees found in Chapter 285 of the Laws of 1908 does not authorize the arbitrary and oppressive distinctions here made."
>
> See also Little v. Tanner, 208 Fed. 605.

We fail to see any difference whatever in the situation of railroads operating their own sleeping and parlor cars and the appellant which would justify the distinction which exists in the taxes imposed. Their business, so far as the operating of such cars is concerned, is identical; yet the appellant is required to pay a larger tax. The case of Pullman Palace Car Co. v. State, 64 Texas 274, 53 Am. Rep. 758, is directly in point. If the classification imposing a tax upon merchants issuing profit sharing certificates in Section 35 of this same act is invalid, as the court recently held in the Van Deman case, 214 Fed. 827, we do not see how the arbitrary exaction of an excessive tax from sleeping car companies in Section 44 and 45 of the act can be sustained. The appellant is required by these sections to pay a tax which is not imposed upon others engaged in identically the same business. It is submitted that such a requirement is arbitrary and unjust and that the appellant is thereby denied the equal protection of the laws.

Furthermore, it should be noted, that under the provisions of the statute no opportunity is given the taxpayer for a hearing. The appellant in the cases at bar not having made its report, it became the duty of the state comptroller to

> "Estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add 10 per cent. to the amount of such taxes as a penalty for the fail-

> ure of such company to make report, and shall proceed to collect such taxes, together with all costs and penalties thereon, the same as other delinquent taxes are collected." (Sec. 47, Chap. 5596.)

The provision above quoted forms an alternative method of ascertaining the amount and assessing the gross receipts tax provided for in that section in case the report is not made. Neither that section nor any other provisions of the statute provide for any hearing with respect to the determination or estimate of the amount of gross receipts or amount of taxes. No notice of the time or place where the tax will be estimated or determined is provided for. In case of proceeding under the alternative provision, due process of law entitled the taxpayer to a hearing and to notice of a hearing.

It may be suggested that the taxpayer himself may obviate the necessity for a hearing by furnishing the report, but if he is willing to bear the penalty for refusing to make the report in case his contention is wrong, then he is within his rights in not making the report, but in that case by the terms of the provision for the alternative method of ascertaining the tax, the Legislature has delegated to an administrative officer the duty of taxing and the taxpayer is entitled to a hearing. The statute having failed to provide for a hearing, a necessary element of due process is lacking.

Chicago, etc., Ry. v. Minn., 134 U. S. 418, 457;

In the recent case of Keenan v. New York, 222 U. S. 525, 535, this court said:

> "The Fourteenth Amendment does not diminish the taxing power of the state, but only

> requires that in its exercise the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not by arbitrary and discriminatory provisions be denied equal protection."

If no hearing is provided for or if the right to be heard should prove illusory, the right to judicial review remains.

Bradley v. Richmond, 227 U. S. 477.

We submit that the tax in question deprives the appellant of its property without due process of law, whether it be considered a property tax or whether a license tax. The appellant is discriminated against by its imposition and is forced to pay a tax which is not imposed upon others in a like situation. The classification which compels appellant to submit to the tax is unreasonable and arbitrary, and, furthermore, in the imposition of the tax itself the appellant is not allowed a hearing, and the principle of due process is violated.

(6) THE CASE PRESENTED IS WITHIN THE COGNIZANCE OF THE EQUITY JURISDICTION OF THE FEDERAL COURT.

Under the statutes of Florida, as construed by the district court, a most singular situation is presented.

The District Court held that appellant should have no standing in equity until it made a report and paid the tax provided for. The situation under the Florida statute and the decisions of the highest court of that state made it unnecessary for appellant to pursue that usually required course as a prerequisite to equitable relief.

The actual happenings at the cases at bar as disclosed by the record make it quite apparent that there has been an *actual* deprivation of property and a denial of equal protection of the laws in these very cases by the enforcement of an illegal state tax without opportunity to be heard thereon and up to this time without an available remedy legal or equitable to prevent it. From the time the statute provided the report and payment should be due until the sheriff had seized the property of the appellant for purposes of sale under the comptroller's warrant and had compelled appellant to pay over $7,000, taxes claimed and costs, to release its property from seizure, there never was a time when, a proceeding whereby, nor a tribunal in which, appellant could be heard, if the district court was right, unless appellant should first report and pay the tax, which, being a voluntary payment, appellant would thereafter have no remedy legal or equitable. Once the appellant made the report and

paid the tax it was powerless. The State Supreme Court held no action will lie to recover back.

Johnson v. Atkins, 44 Fla. 185.
Bloxham v. F. C. & P. R. Co., 35 Fla. 625.
Ratterman v. Express Co., 49 Ohio St. 608, 619, 622.

Section 47 of the Florida Tax Statute goes a step beyond the statute condemned in Cotting v. Kansas City Stock Yards, 183 U. S. 79, 100, 102, where the court held a challenge to the statute was burdened by penalties; here a challenge is virtually prohibited.

See also ex parte Young, 209 U. S. 123, 146.

Appellant could not obtain possession of its property, which was necessary to enable it to fulfill its contract with the railroads, and to enable appellant to perform its duty to the public in furnishing cars and accommodations therein for public service except by payment of the amount claimed for taxes and costs.

No matter how flagrantly illegal a tax may be, the owner of property levied on may not otherwise obtain possession. There was no statutory provision under which appellant could be heard or its property be released on bond; or recovered by replevin. Section 2176 of the General Statutes of Florida in force at that time reads, with respect to the subject of replevin:

> "The affidavit shall state that the plaintiff is lawfully entitled to the possession of the property, (describing it and stating its true value) and that the same has not been taken for any tax, assessment or fine levied by virtue of any law of this state."

Under the rule announced by this court in Gaar,

Scott & Co. v. Shannon, 223 U. S. 468, 472, had the appellant reported and paid its tax, as the district court held it must, it could not maintain an action to recover the amount voluntarily paid even if the tax was illegal. In the case at bar such a payment would not have been under duress. The penalty provided for non-payment of the gross receipts tax by Section 47 is 10 per cent added to the taxes, the customary penalty for non-payment of taxes, did not present a serious condition to be avoided, and could hardly be considered such a duress as would take the payment out of the voluntary class, so it may be said if the appellant had paid voluntarily its money was gone and it was without recourse or remedy legal or equitable. Not having reported and paid, the district court held appellant had not given itself equitable standing by doing the very thing which would have taken away its remedy both legal and equitable.

We think the District Court misconceived the situation in which the appellant would have stood if it had done what that court held to be a condition precedent to equitable standing.

Appellant by the averments of its bills has brought itself within the class as to whom the tax in question is unconstitutional in accordance with the rule stated in Southern Ry. v. King, 217 U. S. 524, 534.

By reason of the peculiar provisions of the statute the situation is unusual and not such that authorities may be found except as bearing upon the principle, but it is hardly to be imagined that appellant should be required to make a return under

a void statutory provision and, at the time of making the return, to pay an illegal tax and thereby render itself without remedy, especially when it was provided by the same statute that the authorities, in the absence of the return, should proceed to the collection of the tax without such a return.

That provision itself was lacking in due process because it did not afford the taxpayer notice of hearing, but it was nevertheless a proceeding provided by the statute for fixing of a tax by a tribunal or officer to whom the legislature had delegated the authority to determine the *amount* of the tax and fix the *amount* of the *liability* of the taxpayer.

Similar questions were before this court in United States v. Freight Association, 166 U. S. 290; Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, and Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433.

In the Freight Association case, the court held that although the association has been dissolved the injunction should go further and enjoin the defendants from entering into a similar agreement, or, as the court said: "In other words, the relief granted should be adequate to the occasion."

In the Commission cases, this court held similarly with respect to an injunction against the enforcement of an order of the Interstate Commerce Commission, the time fixed by the Commission's order having expired; that the questions involved in such orders are usually continuing, the court, therefore, denied the motion to dismiss the appeal be-

cause of the expiration of the time of the order and the fact that the question with respect to that particular order had become moot.

It would seem as though the reasoning should apply to these cases at bar, and as the validity of the tax in question possibly to some extent is bound up with other taxes imposed by the statutes of Florida, it would seem, as was said by Mr. Justice Holmes in Pullman Company v. Adams, 189 U. S. 422, "that The Pullman Company was entitled to know how it stood"; if the tax is invalid it should be determined; if it is a license tax as held by the district court, then whether it is lawful as a license tax or whether, being discriminatory, the appellant is denied equal protection; also the appellant should be entitled to know for what the license is imposed and what it is permitted to do upon payment of this tax which it would not otherwise be permitted, so that if the permitted thing or things be those which it is at liberty to renounce as in Pullman v. Adams, 189 U. S. 422, it may exercise its rights in that behalf.

The ruling of the district court should be reversed; the appellant should be granted the injunction prayed for in the second action, and the invalid taxes, the enforcement of which was made possible by the error of the District Court, should be decreed to be repaid.

It is, of course, not claimed that mere illegality of the tax is sufficient to entitle appellant to an injunction. It must by proper averments show that it is entitled to equitable relief by injunction.

The only statute of the State of Florida under

which taxes could be contested was Section 2006 of the General Statutes of 1906, which was as follows:

> "In all cases where assessments are made against any person, body politic or corporate, and payment of the same shall be refused upon allegation of the illegality of such assessment, such person, body corporate or politic, may apply to the judge of the circuit court by petition setting forth the alleged illegality, and present the same, together with the evidence to sustain it, and the judge shall decide upon the same, and if found to be illegal, shall declare the assessment not lawfully made."

The remedy provided by this statute is confined to an illegal assessment.

Tampa v. Muggs, 40 Florida 326.

A petition under that statute must show that the illegality in the assessment exists at the time the petition is filed.

Pensacola v. Bell, 22 Florida 466.

And the statute is held to provide a summary remedy by petition only with respect to assessments in which there is an error on the face of the assessment roll.

Knight v. Matson, 53 Florida 609.

The remedy is not co-extensive with that afforded by a court of equity to prevent the collection of taxes. It is confined entirely to illegality of assessments, and reaches only illegalities in matters of law connected with the assessment.

Jackson County v. Thornton, 44 Florida 610.

Jackson County v. Southern Land & Timber Co., 45 Florida, 374.

Both the Supreme Court of Florida and this

court have held the tax may not be paid and suit maintained to recover it back.

Johnson v. Atkins, 44 Florida 184.

Bloxham v. F. C. & P. R. Co., 35 Florida 625.

Gaar, Scott & Co. v. Shannon, 223 U. S. 468, 472.

Appellant had no remedy at law.

Raymond v. Chicago Traction Co., 207 U. S. 39, 40.

Union Pacific v. Cheyenne, 113 U. S. 516, 525.

Fargo v. Hart, 193 U. S. 490.

The threatened injury by seizure of property, which the statute makes mandatory upon the comptroller, and the comptroller's demand and notice of his intended action thereunder, in the light of the holding of the Supreme Court of Florida that taxes voluntarily paid could not be recovered back, left appellant absolutely without remedy at law, and there was no way by which appellant could prevent the threatened injury *except* by payment of the tax.

In Pennoyer v. McConnaughy, 140 U. S. 1, 12, this court said:

> "But the general doctrine of Osborn v. Bank of the United States, that the circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state, when to execute it would violate rights and privileges of the complainant which has been guaranteed by the constitution, and would work irreparable damage and injury to him, has never been departed from."

This language was quoted approvingly by Mr.

Justice Peckham in the opinion of the court in Ex parte Young, 209 U. S. 152.

That the danger of the seizure and consequent injury to appellant and its property was actual and imminent is amply shown by the issuance of the comptroller's warrant; the seizure of property and the enforced payment of the tax as soon as the district court vacated its temporary restraining order whereby the appellant, in addition to having paid the ad valorem taxes on its property and the license taxes for the single taxable privilege of conducting its business, was obliged to pay a further tax of more than $7,000 on the earnings of its property, not imposed on earnings of railroad companies from the same business or on any other person, company or their property.

It is our earnest contention upon the facts as shown that the case presented is within the cognizance of the equity jurisdiction of the federal court and that the injunction prayed for in the bills should have been granted.

The view most favorable towards the State's contention regarding the gross receipts tax that can be taken is that not being a valid property tax the statute could not be sustained except upon the *theory* that it was an additional license tax, although not so defined and also notwithstanding that the evidence afforded by the statutes themselves pointed to a contrary legislative intention, and also notwithstanding that even if it was a license tax it was so unjustly discriminatory that its enforcement would deny the appellant the equal protection of the laws. The learned district

court took this most favorable view. In doing so it appears to us that there was apparently lost to view the rule laid down by Mr. Justice Brewer in Gulf, Col. & Santa Fe Ry. v. Ellis, 165 U. S. 150, 154, in which the justice says:

> "While good faith and a knowledge of existing conditions on the part of a legislature is to be presumed, yet to carry that presumption to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminating legislation is to make the protecting clauses of the Fourteenth Amendment a mere rope of sand, in no manner restraining state action."

And we would further call attention of the court to the language used by Mr. Justice Bradley nearly thirty years ago in the case of Boyd v. United States, 116 U. S. 616, 635, which has been adhered to by this court in all cases involving constitutional rights:

> "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional

rights of the citizens and against any stealthy encroachments thereon."

Respectfully submitted,

FRANK B. KELLOGG,

GUSTAVUS S. FERNALD,

JOHN E. HARTRIDGE,

Attorneys and Solicitors for Appellant.

APPENDIX.

Laws of the State of Florida, 1907,—Ch. 5596, 5597.

Chapters 5596 and 5597, Laws of Florida, 1907, are very comprehensive enactments, covering generally the subject of taxation and taking the place of most of the previous legislation on that subject.

AD VALOREM STATUTE.

Chapter 5596 is entitled:

"AN ACT RELATING TO TAX ASSESSMENTS AND COLLECTION OF REVENUE."

It seems to be intended to embrace generally the field of ad valorem taxation, and it also contains a section subjecting sleeping and parlor car companies to a gross earnings tax. The following is an abstract of some of the provisions of the act, matter in single space being taken from the act verbatim:

> Section 1. That all real and personal property in this State, and all personal property belonging to persons residing in this State, not hereby expressly exempted therefrom, shall be subject to taxation in the manner provided by law.
>
> * * * * *
>
> Section 8. The owner or holder of stock in any incorporated company doing business under incorporated name shall not be taxed for such stock; provided, that such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. * * *
>
> * * * * *

Sections 1 to 45 inclusive provide a general system for a uniform ad valorem tax on all real and personal property, and also for a poll tax on individuals. These sections prescribe the methods by which the taxes are to be assessed, levied, collected and enforced, and the duties of the various county and state officers in connection therewith. They also provide for the exemption from taxation of certain property, and that all other property, real and personal, shall be taxed as therein provided.

Section 46. The President and Secretary, or Superintendent or Manager of any railroad company or street railroad company *or sleeping or parlor car company*, or the receiver thereof, whose *car*, track or roadbed, or any part thereof is in this state, shall annually, on or before the first Monday in March, return to the Comptroller of the State, under their oath, the total length of such railroad, the total length and value of such maintrack, branch, switch and spur track, and side track, lots or parts of lots not leased or rented, and terminal facilities, in this State, and the total length and value thereof in each county, city or incorporated town in this State, as of the first day of January. They shall also make return of the number and value of all locomotives, engines, passenger, *sleeping*, freight, *parlor*, platform, construction and other cars and appurtenances, and should any such company or its officers fail to make the returns required by this act on or before the first Monday in March, *when such returns are made, or should any such returns not be made*, or should the Comptroller have reason to believe that any return so made does not give the complete and correct value of such railroad property, it is

hereby made the duty of the Comptroller, Attorney General and State Treasurer, *after having given not less than five days' notice to the person or persons making the return of the time and place of hearing,* to assess the same from the best information they can obtain, specifying the value thereof in each county; and the value of the locomotives, engines, passenger, *sleeping, parlor,* freight, platform, construction and other cars and appurtenances shall be apportioned by the Comptroller pro rata to each mile of main track, branch, switch, spur track, and side track, and the Comptroller shall notify the County Assessor of Taxes of each County through which such railroad runs of the number of miles of track and the value thereof, and the proportionate value of the personal property taxable in their respective counties, and he shall notify each incorporated city and town in which said railroad runs of the mileage, apportionment of rolling stock, and other property of said railroad within such city or town, and the value thereof shall be assessed by such city or town, as provided by law, and upon the value thus ascertained and apportioned, taxes shall be assessed the same as upon the property of individuals. *That every telegraph line in this State shall be returned and assessed in the manner as is provided by this act for the assessment of railroads, and in case of failure to pay the taxes assessed, the entire line of telegraphs in this State and all of its properties, rights and franchises, or any property belonging to the same company, person or persons, may be sold in the same manner as is provided for the sale of the railroads or any of its property upon which any tax shall be due and not paid.*

The above quoted Section 46 is an amendment of Section 549 of the General Statutes of the State of Florida, 1906, which is said to be a re-enactment of Chapter 4514, Acts 1897, amending Chapter 4322, Acts 1895, and the matter italicized above is added to the law as it stood in 1906 by the Act of 1907.

> Section 47.—All sleeping and parlor car companies operating their cars in this state shall, on or before the first day of January 1908, and annually thereafter, report to the Comptroller of the State of Florida, under oath of the Secretary or other officer of such company, the total amounts of their gross receipts derived from business done between points in this State; and at the same time shall pay into the State treasury the sum of one dollar and fifty cents upon each one hundred dollars of such gross receipts, and if any such company shall fail to make such report to the Comptroller and pay the tax thereon as herein provided, the Comptroller shall estimate the amount of such gross receipts from such information as he may be able to obtain, and shall add ten per cent to the amount of such taxes as a penalty, for the failure of such company to make reports, and shall proceed to collect such tax, together with all costs and penalties thereon, the same as other delinquent taxes are collected.

Sections 48 to 65 inclusive provide for the collection of unpaid taxes on railroad property and real estate, and for compensation to the county officials charged with the duty of administering the law.

Section 59 gives authority to tax collector of any

city or incorporated town to sell property or railroad or telegraph companies for non-payment of taxes, and then continues:

> Nothing in this act shall be so construed as in any way abridging or limiting powers to assess, levy or collect taxes, licenses or assessments which have been or may be granted to any municipal corporation by special act or charter act, or as limiting such municipal corporation in the method of assessing levying or collecting the same, to the methods established by this act.

There are many provisions in the act which provide for the administration and collection of ad valorem taxes, and for sale of property for non-payment of taxes.

The act was approved June 18, 1907, and it provides that it shall go into effect upon its passage.

LICENSE STATUTE.

Chapter 5597, Laws of Florida, 1907, is an act entitled:

AN ACT IMPOSING LICENSES AND OTHER TAXES PROVIDING FOR THE PAYMENT THEREOF, AND PRESCRIBING PENALTIES FOR DOING BUSINESS WITHOUT A LICENSE, OR OTHER FAILURE TO COMPLY WITH THE PROVISIONS THEREOF.

> Section 1. No person, firm or corporation, shall engage in or manage the business, profession or occupation mentioned in this act unless a State license shall have been procured from the tax collector of the county wherein the place of business may be located, or State Treasurer, which license shall be issued to each person, firm or corporation on receipt of the amount hereinafter provided, together

with the County Judge's fee of twenty-five cents for each license countersigned by him, and shall be signed by the tax collector and the County Judge, and shall have the County Judge's seal thereon. Every word importing the singular number only, may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number, and every word importing the masculine gender only, may extend to and apply to females as well as males. Whenever the word oath is used in this act, it may be held to mean affirmation, and the word swear in this act shall be held to include affirm.

Section 2. Counties and incorporated cities and towns may impose such further taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in this act, when the business, profession or occupation shall be engaged in within such county, city or town. The tax imposed by such county, city or town, shall not exceed fifty per cent of the State tax. But such county, city or town may impose taxes on any business, profession or occupation not mentioned in this act, when engaged in or managed within such county, city or town.

Section 3 provides for the terms for which licenses may be issued, and for licenses for a fraction of a year, for transfer of licenses on a bona fide transfer of property used in the business for the transaction of which the license is paid.

Section 5. That the following enumerated individual license taxes shall be paid to the State by the persons engaging in, managing or transacting the several occupations or professions named, to-wit:

SCHEDULE A.

Then follows a long schedule of various occupations and the taxes payable by each.

Sections 6 and 7 relate to licenses for the sale and manufacture of intoxicating liquors.

Section 8 starts out with an exemption in favor of manufacturers of domestic wines, and then follows this paragraph, as a part of Section 8:

> The owners, managers or agents of each of the following enumerated institutions, establishments, appliances and apparatus for the transaction of business or entertainment or accommodation of the public for profit shall pay the State license taxes set opposite their respective designations or definitions in Schedule B below, to-wit:

SCHEDULE B.

Here follows a long enumeration, alphabetically arranged, of brokers, bankers, barbers, etc—all still a part of Section 8 of the act, and then comes the following:

> "That each insurance company or association, firm or individual doing business in this State * * * shall pay to the State Treasurer a license tax of $200 * * * and in addition thereto each of said companies shall, upon the 1st day of January after the passage of this act, and on the first day of each succeeding January thereafter, pay to the State Treasurer two per cent of the gross amount of receipts of premiums from policy holders in this State.
>
> Companies or associations doing business under Chapter 5459, Laws of Florida, acts of 1905, shall pay to the State Treasurer two per

cent of the gross amount of receipts from policy holders in this State. * * *

That each insurance company shall pay to the State Treasurer for each traveling agent or solicitor doing business in this State a license tax of twenty-five dollars.

* * * * *

Job printing offices, running by power, five dollars.

Laundries, steam, ten dollars.

* * * * *

Sleeping and parlor cars, twenty-five dollars for each car.

With buffet, forty dollars for each car.

Dining cars, twenty dollars each.

Street shows, performances or carnivals * * for each tent or other structure and for each day, five dollars.

* * * * *

Any train conductor, or any conductor of any sleeping car, parlor, buffet or dining car, who hauls or operates any such car within this State without such license, or who fails or refuses to exhibit such license when required by any collector of revenue in any county in this State, shall be guilty of a misdemeanor, and shall be punished therefor by a fine of not more than five hundred dollars, or by imprisonment for not more than sixty days for each offense.

All steamboats or steam ferries * * * shall pay a license tax of fifty dollars * * *.

* * * * *

Telegraph systems * * * shall pay a license tax to the Comptroller of fifty cents per mile.

Section 8 of the act concludes with requirement of license taxes from gas and electric light works.

Section 10 requires authenticated reports where

amount of license tax is to be computed on basis of capitalization of corporations or on value of property used in the business.

> Section 11. Any person or persons, firm or corporation or association that shall carry on or conduct any business or profession for which a license is required, by either this or any other act, without first obtaining such license, shall, except in such cases as are otherwise provided by law, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than double the amount required for such license. The payment of all license taxes shall be enforced by the seizure and sale of the property by the collector; or in case of State license taxes payable either to the State Treasurer or the Comptroller, by the State Treasurer or the Comptroller, as the case may be * * *.

Sections 12 to 15 inclusive contain various provisions for the administration and enforcement of the taxes levied by the act.

> Section 16. That nothing in this act shall be construed as in any way abridging or limiting the powers which have been granted or may be granted to any municipal corporation, by special act or charter act, for the purpose of requiring the payment of license taxes.
>
> Section 17. That all laws and parts of laws in conflict with the provisions of this act are hereby repealed; but nothing in this act contained shall be held to repeal an act passed at the present session, entitled "An act to imposed license taxes on railroad companies."

The act was approved June 1, 1907.

Laws of Florida, 1907. Chapter 5623—(No. 28.)

An Act To Impose License Taxes on Railroad Companies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. Any railroad company doing business in this State shall pay annually on the first day of October to the Comptroller of the State a sum equal to ten dollars for each and every mile of its railroad tracks in this State, including branches, switches, spurs and sidetracks, as shown by the last assessment of the said railroad company for property taxation, as a license tax, one-half of which amount shall be paid into the State Treasury, and one-half of which amount shall be distributed immediately by the Comptroller to the various counties in which such railroad may be located, proportioned to the amount of railroad trackage in each county, which license tax shall be in lieu of all other State and County license taxes on said railroad companies.

Approved June 3, 1907.

* * * * *

LIST OF CASES CITED.

STATUTES OF FLORIDA PRINTED IN APPENDIX.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 936 383

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLEE.

No. 937 384

THE PULLMAN COMPANY, APPELLANT,

vs.

W. V. KNOTT, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLEE.

THOMAS F. WEST,
Attorney General of Florida,
Attorney for Appellee.

T. J. Appleyard, State Printer, Tallahassee, Fla.

Supreme Court of the United States.

OCTOBER TERM, 1914.

No. 936.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

No. 937.

THE PULLMAN COMPANY,

Appellant,

vs.

W. V. KNOTT, as Comptroller of the State of Florida,

Appellee.

BRIEF FOR APPELLEE.

STATEMENT.

The court is familiar with the questions involved in this litigation, the record having been examined and a recital of the averments of the appellant's bill of complaint having been made in the statement of the case prepared by the Court when the case was here before (Pullman Company v. Croom, Comptroller, 231 U. S. 571).

When the question was first presented to the Federal Court upon application for injunction, under the provisions of Section 266, of the Judicial Code, against the State Comptroller, the officer charged by the statute with the duty of collecting the tax imposed, the following order was made by the Judges then sitting:

> "This cause came on to be heard upon an application for an injunction pendente lite before Don A. Pardee, A. P. McCormick and D. D. Shelby, Circuit Judges, sitting in Chambers in the City of New Orleans and was argued upon bill and affidavits by John E. Hartridge, Esq., for the Complainant and the Hon. Park Trammell, Attorney General of the State of Florida, for Defendant:
>
> Whereupon, and on due consideration, the said Judges being of the opinion that Section 47, Chapter 5596 of the Laws of Florida, approved June 18th, 1907, taken in connection with Chapter 5597 of the Laws of Florida, approved the same day, provided for a graded license tax on all sleeping and parlor car companies operating their cars in the State of Florida, and is within legislative power of the State; and, further, that the said complainant can have no standing in equity to resist the tax levied under said law until it shall have made the return provided for therein and paid the taxes thereon, the said application is denied."
>
> New Orleans, La., February 11th, 1911.
>
> DON A. PARDEE,
> Circuit Judge.
> A. P. McCORMICK,
> Circuit Judge.
> DAVID D. SHELBY,
> Circuit Judge."

Subsequently, when the case was again presented, in an effort to restrain the State Comptroller from the enforcement of the payment of the taxes due for another year, another order to like effect was made by the three Judges then sitting, as follows.

> "This cause came on to be heard upon application for an injunction pedente lite before Don A. Pardee and D. D. Shelby, Circuit Judges, and T. S. Maxey, District Judge, sitting in Chambers in the City of New Orleans and was argued upon bill and affidavits by John E. Hartridge, Esq., for the Complainant and the Hon. Park Trammell, Attorney General of the State of Florida, for Defendant.
>
> Whereupon, and on due consideration, the said Judges being of opinion that Section 47, Chapter 5596, of the Laws of Florida, approved June 18, 1907, taken in connection with Chapter 5597 of the Laws of Florida, approved the same day, provided for a graded license tax on all sleeping and parlor car companies operating their cars in the State of Florida, and is within the legislative power of the State,—
>
> The said application is denied.
>
> New Orleans, La., December 21st, 1911.
>
> DON A. PARDEE,
> Circuit Judge.
> DAVID D. SHELBY,
> Circuit Judge.
> T. S. MAXEY,
> District Judge."

After the case had been heard, and dismissed for the reason stated in the opinion referred to, prepared by this Court, and the question was again submitted to three Federal Judges under the provisions of the statute referred to, the following order was made in each case (Record 936, p. 21, 937, p. 22):

> "This cause coming on to be heard before Hon. Don A. Pardee, Circuit Judge, in the absence of Honorable William B. Sheppard, District Judge of the

District, upon the application of the Complainant, upon a supplemental bill filed herein in Equity Cause No.——— of the docket, for an interlocutory injunction restraining the enforcement of a State statute upon the ground of the unconstitutionality of said statute, and thereupon, in pursuance of the statute in such cases made and provided, Honorable D. D. Shelby, Circuit Judge, and Honorable W. I. Grubb, District Judge, were called, and appeared to assist in the hearing and determination of said application; and it appearing to the Court thus organized that due notice of said application has been served upon Honorable Park Trammell, Governor of the State of Florida, Honorable Thomas F. West, Attorney General of the State of Florida, and Honorable W. V. Knott, Comptroller of the State of Florida, and John E. Hartridge, Esq., counsel for complainant, and Honorable Thomas F. West, Attorney General State of Florida, counsel for defendant, appearing and both parties being ready for hearing and consenting thereto, on this the 9th day of February, 1914, the application was argued and submitted for decision.

Whereupon, upon due consideration the application for an interlocutory injunction was denied.

Witness our hands this 10th day of February, 1914.

DON A. PARDEE,
Circuit Judge.
DAVID D. SHELBY,
Circuit Judge.
W. I. GRUBB,
District Judge."

From this order appeals were taken to this Court.

ARGUMENT.

1. The gross receipts tax is a license tax and valid under the Constitution of the State of Florida:

It is shown by the brief of appellant that the statute imposing the tax complained of has been in force for twenty years (Chapter 4115, Acts of 1893, Laws of Florida), and

that the tax has been paid by complainant for all these years, and without questioning its constitutional validity, until the passage of the statute (Section 46, Chapter 5596, Acts of 1907, Laws of Florida,) imposing an advalorem tax upon sleeping and parlor car companies, to be assessed upon the same basis, by the same officers, and collected in the same manner as the advalorem tax imposed upon other public service corporations in the State of Florida is collected.

When this last mentioned statute was adopted, appellant discovered that the statute imposing the gross receipts tax was in contravention of the provisions of the Florida Constitution on the subject of Taxation and Finance.

Constitution of the State of Florida, Article IX.

It is conceded that only two classes of taxes can be levied in this State, namely, an advalorem tax and a tax on licenses.

Afro-Am. Ind. and Benefit Ass'n. v. State of Florida, 61 Fla. 85, at p. 89.

The vital question here is, can the tax complained of be sustained as valid under the Constitution of the State either as an advalorem tax or a tax on licenses.

We believe that a reference to a very few of the Florida cases will demonstrate that this is not an open question in this Court, for the reason that it has been held by the Court of final appellate jurisdiction in the State of Florida that the tax complained of is a tax on licenses within the meaning of the term as employed in the Constitution of the State.

Before referring to the Florida decisions I would call the Court's attention to the following rule of construction:

A decision of the highest court of the State upon questions of constitutional law arising under the Constitution of such State, is binding upon the Federal Courts.

Manley v. Park, 187 U. S. 547.
L. & N. R. R. Co. v. Kentucky, 183 U. S. 503.
Danville Water Co. v. Danville, 180 U. S. 619.
Freeport Water Co. v. Freeport, 180 U. S. 587.
Wilks Co. Com'rs. v. Coler, 180 U. S. 506.
Moffitt v. Kelley, 218 U. S. 400.

And also the rule of interpretation in this Court of a State statute which has been passed upon by the highest Court of the State, as follows:

An interpretation placed by the highest Court of the State upon a State statute is conclusive upon the Federal Courts.

Watson v. Maryland, 218 U. S. 173.
Kentucky Union Co. v. Kentucky, 219 U. S. 140.
Lindsley v. Natural Gas Co., 220 U. S. 61.

It is urged by appellant that there is no provision of the law under which any official of the State of Florida could issue a license in consideration of the payment of the gross receipts tax, and no provision making the right to conduct a sleeping car business in the State dependent upon the payment of the tax, and therefore such tax can not be held to be a license tax under the Constitution of the State.

These questions, however, have been settled by the Supreme Court of the State of Florida contrary to appellant's contention.

In passing upon the constitutional validity of a statute of the State imposing a license tax upon dealers in dressed meats, the amount of such tax being based upon the amount of the annual gross sales of such dealers, the Court used the following language:

> "One tax is independent of the quantity of business, the other dependent upon it, and the license being required to issue in connection with the payment of the former, but not as to the latter. In the case at bar a previous license cannot, in the nature of things, be required, and there is no tax independent of business, but the sole tax is dependent upon the amount of business; and as in the former case, the taxes which are dependent upon business are not payable until after the business has been done, or, in other words, their payment is not a condition precedent to engaging in the occupation of an insurance company or auctioneer, so in the case of dealers in dressed meats whose business amounts to twenty-five thousand dollars per annum, their tax of five hundred dollars is not payable until the business has been done, and, like the percentage mentioned, is not

> within the clauses of the statute which provide for its payment before the business can be engaged in."
> Johnson v. Armour & Co., 31 Fla. 413, at p. 424.

It was further held in this case that although such tax was a license tax under the Constitution of the State that if not voluntarily paid, its payment could be enforced by an ordinary civil action

In the case of Afro-American Industrial and Benefit Association v. State, Supra, the Court necessarily held to like effect because precisely the same situation existed and these questions were necessarily decided. And it was xpressly decided in this case, and in the case of Peninsular Industrial Insurance Company v. State, 61 Fla. 376, that the gross receipts tax imposed upon insurance companies doing business in Florida was a license tax under the provisions of the Constitution, notwithstanding the existence of other valid statutes imposing other license taxes upon such companies, and although the amount of such annual gross receipts tax due by each insurance company for each year is ascertainable only at the end of the year's business and collectible only after the amount has been ascertained by an ordinary civil action, as expressly decided in the case of Johnson v. Armour & Co., supra.

A similar conclusion has been reached in other States upon this question, as illustrated by the very recent case of Brown v. Pittsburgh Life and Trust Co. (Ala.) 65 South. 699, and other cases cited therein.

It should not be overlooked in this connection that all insurance companies now, and at the time of these Florida decisions, also pay an advalorem tax on all such property as they may own in the State of Florida.

The aggregate of all taxes imposed by the State upon insurance companies is held not to be excessive in amount. The total amount of taxes for all purposes imposed upon sleeping and parlor car companies is no greater than the aggregate of the tax for all purposes imposed upon insurance companies, and the amount of the tax in each case is well within the rule sustained by this Court in the case of United States Express Company v. Minnesota, 223 U. S. 335, wherein a State statute imposing a tax of six per cent. of the gross receipts in lieu of all other taxes upon Express

Companies doing business in the State of Minnesota was upheld.

Upon the authority of theses cases I submit that the question of whether or not the gross receipts tax, here complained of, is a license tax is not open to debate here.

Brown-Forman Co. v. Kentucky, 217 U. S. 563.

It is also settled in law in Florida and elsewhere that the levy of an advalorem tax upon property, and also a license tax upon the use of the same property, is not double taxation, and that a license fee is not at tax within the provisions of the organic law requiring uniformity of rates and just valuations of property for purposes of taxation.

Jackson v. Neff, 64 Fla. 326.
Cooley on Taxation (3rd. ed.) 392.
Harder's Fireproof Storage and Van Co. v. City of Chicago, 235 Ill. 58.
Ayers v. City of Chicago, 239 Ill. 237.
Garrett v. Turner (Pa.) 84 Atl. Rep. 354.

It is also held by the Supreme Court of Florida that a statute imposing a license tax upon occupations may be solely and wholly a revenue measure.

Harrison v. Kersey, 67 Fla. 24, 64 South. 353.

That a privilege or license tax may perform the double function of regulating the business under the police power, and producing revenue, if authorized by the law of the State, is settled in this Court.

Bradley v. City of Richmond, 227 U. S. 477.

Based upon these authorities the conclusion that the tax complained of is a license tax and not obnoxious to any provision of the State Constitution, seems inescapable, and this Court, I respectfully submit, as stated in the first headnote in the case of Brown-Forman Co. v. Kentucky, supra, should:

> "accept the construction by the highest Court of the State that the tax imposed by the State statute in this case is not a property tax but a license tax imposed on the doing of business."

2. Does the statute complained of here contravene the provisions of the Fourteenth Amendment to the Federal Constitution in that its enforcement denies to the appellant the equal protection of the law or deprives it of property without due process of law.

This is also a question of the greatest importance to the State, for the reason that tens of thousands of dollars of the State's revenues are derived from taxes imposed upon the basis of gross receipts. Indeed it may be truthfully declared that it is the settled policy of the State to impose taxes upon this basis in a large class of cases. To hold the statutes providing for taxation upon this basis to be invalid would demoralize the whole taxation system of the State and deprive the State of sources of revenue upon which it has depended for years.

We have seen that there is collected from insurance companies doing business in the State an annual gross receipts tax of two per cent. of the gross amount of receipts of premiums from policy holders. From this source the State receives thousands of dollars annually. Express companies doing business in the State also pay an annual tax of two per cent. of the total amount of gross receipts derived from business done in the State annually (see Sec. 22, Chapter 6421, Laws of Florida). From this source large sums are also derived by the State annually. And all insurance companies and all express companies, as well as sleeping and parlor car companies, pay this gross receipts license tax at the end of each year, as well as a comparatively small license tax imposed and collected at the beginning of each fiscal year. In addition to the two license taxes paid, insurance companies and express companies, as well as sleeping and parlor car companies pay an advalorem tax on all property owned by such companies in the State.

Railroad Companies, in lieu of this gross receipts license tax, pay a license tax of $10.00 for each and every mile of its railroad tracks, including branches, switches, spurs and side-tracks, in the State (see Chapter 5623, Acts of 1907, Laws of Florida), and also the advalorem tax imposed by Section 46 of Chapter 5596.

That this gross receipts tax has been regarded by the State as a license tax and not an advalorem tax appears from the opinion in the case of Afro-American Industrial

and Benefit Association, etc., v. State, supra, where suit was brought by the State to enforce the collection of the tax as a license tax. This view, as we have seen, was sustained by the Court, and in considering the question of the validity of the tax under the provisions of the Fourteenth Amendment of the Federal Constitution it should be so regarded.

That a State officer may have referred to the tax as other than a license tax does not change its true character, and this appellant should not be granted immunity from the tax now because a State officer may have made a mistake in referring to it as a property tax when in fact it is a license tax.

> Florida Central & P. R. Co. v. Reynolds, 183 U. S. 471, at p. 475.

The rules by which the validity of the statute involved here must be tested under the Fourteenth Amendment of the Federal Constitution are the same in this Court and in the Supreme Court of the State of Florida, the Florida Court having expressly adopted the rules laid down by this Court.

> Lindsley v. Natural Carbonic Gas. Co., 220 U. S. 61.
> Peninsular Industrial Insurance Co. v. State, supra.

That the statute here involved imposing a gross receipts license tax upon sleeping and parlor car companies does not contravene in letter or in spirit the provisions of this amendment to the Federal Constitution is apparent in the light of the following cases:

> Dutton Phosphate Co. v. Priest, 67 Fla. 370, 65 South. 284.
> Butler v. Perry, 67 Fla. 405, 66 South. 150.
> Noble v. State, (Fla.) 66 South. 154.
> Pacific Express Co. v. Seibert, 140 U. S. 339.
> Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 559, 562.
> Cook v. Marshall County, 196 U. S. 261, 274.
> Armour Packing Co. v. Lacy, 200 U. S. 226, 235.
> Southwestern Oil Co. v. Texas, 217 U. S. 114, 121.
> Bells Gap. Rd. v. Pennsylvania, 134 U. S. 232.
> Cargill Co. v. Minnesota, 180 U. S. 452.
> Missouri, Kansas & Texas Railway Co. v. May, 194 U. S. 267.

Williams v. Arkansas, 217 U. S. 79.
Patsone v. Pennsylvania, 232 U. S. 138.
Quong Wing v. Kirkendall, 203 U. S. 59.
Baker v. Walker, 204 U. S. 311.
Citizens Telephone Co. v. Fuller, 229 U. S. 322.
Singer Sewing Machine Co. v. Brickell, 233 U. S. 304.

It is urged on behalf of appellant that no notice is given to it of the amount of the annual tax which it is required to pay. In this connection it must be remembered that the amount of the taxes is ascertained from information in the nature of reports furnished by appellant. Its record books are in its custody and its book-keeping is of course under its supervision. It, therefore, has full information on the subject at all times. In a case where a similar question was involved, this Court used the following language:

> "What notice could they have which the law does not give them? They know that their bonds are to be assessed at their face value, and that a tax of three mills on the dollar of that value will be imposed; and that they will only be required to pay this tax when, and as they receive the interest. If the State may assess the tax upon the face value of the bonds, notice in pais is not necessary. We think that there is nothing in this objection which shows any infraction of the Federal Constitution. It is urged that it is a taking of the bondholder's property without due process of law. We must confess that we cannot see it in that light. The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain. It involves no violation of due process of law, when it is executed according to customary forms and established usages, or in subordination to the principles which underlie them. We see nothing in the process of taxation complained of, which is obnoxious to constitutional objection on this score. Stockholders in the National banks are taxed in this way, and the method has been sustained by the express decision of this Court."

Bells Gap Railroad Co. v. Pennsylvania, 134 U. S. 232, at pp. 238-9.

In the State Railroad Cases, 92 U. S. 575, at pp. 613-14, this principle was announced:

> "It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be forced by summary and stringent means against reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice."

It is suggested that the decision in the case of Van Deman & Lewis Co. v. Rast, 214 Fed. Rep. 827, should influence the decision here. The Court decided that case largely upon authority of the case of Little et al. v. Tanner, 208 Fed. Rep. 605, wherein the validity of a similar statute of the State of Washington was involved. Later when a case involving the validity of this statute was submitted to the Supreme Court of the State of Washington, that Court, upon mature consideration, upheld the statute.

State v. Pitney, ——— Wash. 451. 140 Pac. Rep. 918

It is submitted, therefore, that it has not been made to appear that the imposition of the tax complained of here violates any provision of the Federal Constitution.

In concluding this branch of the argument it should be stated (since counsel for appellant makes a suggestion to the contrary) that no railroad in Florida operates its own sleeping and Pullman cars such as are operated by appellant. The only exception to this was when the Flagler System owned and operated such cars on its trains for a short time, but this policy was abandoned several years ago and before the questions involved here arose.

3. Does Appellant's bill of complaint state a case within the jurisdiction of a court of equity?

This is the last question argued by counsel for appellant.

The rule on this subject has been stated by this Court as follows:

> "It is settled that the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction."
>
> Cruickshank v. Bidwell, 176 U. S. 73.
> Shelton v. Platt, 139 U. S. 591.
> Allen v. Pullman Palace Car Company, 139 U. S. 658.
> Pacific Express Co. v. Seibert, 142 U. S. 339.
> Pittsburgh &c. Railway Co. v. Board of Public Works, 172 U. S. 32.
> Arkansas Building & Loan Association v. Madden, 175 U. S. 269.
> Indiana Manufacturing Co. v. Koehne, 188 U. S. 681.

The Florida Supreme Court, in a case in which suit was brought against a County Tax Collector to restrain him from seizing certain personal property for the purpose of enforcing the collection of a license tax, announced the following rule:

> "The decision of the court below was substantially upon the merits of the controversy, when in fact it should have abstained from any consideration of the merits and should have sustained the demurrer and dismissed the bill upon the first ground thereof alone, viz.: that there was no equity in the bill without passing upon the merits of the case. This court in divers cases has settled the rule beyond further controversy, that a court of equity will never interfere to restrain by injunction a levy upon and sale of **personal** property, unless the same is of such peculiar and intrinsic value to the owner that its loss cannot be compensated adequately in damages, and that the remedy in such cases is as at law by an action of trespass, or other appropriate remedy in the courts of law. And it has further been settled by repeated decisions here that where it is apparent to the appellate court upon the face of a bill that it does not state a

case cognizable in a court of equity, it will dismiss such bill for want of equity, even though the question of equitable jurisdiction was not presented by the pleading or raised before the appellate court."

Florida Packing & Ice Company v. E. L. Carney, Tax Collector, &c., 49 Fla. 293.

City of Jacksonville v. Massey Business College, 47 Fla. 339.

It will be observed that the case from which we quote is directly in point. The tax collector there was proceeding to enforce payment of a license tax by a seizure of personal property of the company engaged in the occupation taxed, just as the Comptroller of the State is directed to proceed to enforce the payment of the license tax due by appellant by a seizure and sale of its personal property.

Necessarily all of the elements of the "most singular situation" described and complained of by counsel for appellant were considered by the Supreme Court of Florida, and a conclusion directly opposite to that insisted upon by them was reached by that Court.

It is, therefore, respectfully submitted that appellant's bill of complaint does not state a case cognizable in a court of equity.

Respectfully submitted,

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